

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
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FOI/PA# 1377168-0

Total Deleted Page(s) = 22

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FEDERAL BUREAU OF INVESTIGATION
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JOHN ESHLEMAN WAHL

ATTORNEY AT LAW
35 GROVE STREET
1232 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94102

415-863-8555

July 15, 1983

Mr. Joseph P. Russoniello
United States Attorney for the
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Request for Prosecution of Dan
White, Pursuant to Title 18,
U.S.C. § 245, for Violation of
Civil Rights of Mayor George
Moscone of San Francisco and
Supervisor Harvey Milk of San
Francisco, by Murdering them
Because of their Political
Activities Within the Exercise
of their Offices as Mayor and
~~~~~ Supervisor ~~~~~

Dear Mr. Russoniello:

Supplementing the Brief In Support Of Request For  
Prosecution, given to you on June 27, 1983 (along with my  
letter of that date), here is potential additional evidence  
for use in the prosecution:

(1) Attached to this letter is the June 28, 1983,  
Declaration (under penalty of perjury) of MICHELLE CORWIN,  
Chief Deputy Registrar of Voters of the City and County of  
San Francisco, attesting to the locating of copies of  
Mayor GEORGE MOSCONE's Declaration of Intention (to re-run for  
Mayor), and Supervisor HARVEY MILK's Declaration of Intention  
(to re-run for Supervisor). She also attests that the records  
of her office show that the Declarations were filed (and I  
was informed that one of the Declarations is apparently the  
original). She has attached copies of the Declarations, and  
of the record showing filing, to her Declaration. You can  
see that the date/time stamp, on Mayor MOSCONE's Declaration,  
shows a filing of October 27, 1978, less than a month before  
the killing, and Supervisor MILK's Declaration's date/time  
stamp shows a November date, which appears to be November 7, 1978.

(2) I have received a telephone call from [redacted] b6  
[redacted] who states that he is [redacted] DON BRADLEY, now deceased, b7C  
DON BRADLEY was Mayor MOSCONE's Campaign Manager. [redacted]

[redacted] states that he, his father, and the Mayor, all had lunch together within approximately two (2) weeks of the assassinations. At that lunch DON BRADLEY informed the Mayor that a telephone poll which had been done showed that the Mayor was the most electable candidate in the forthcoming elections (for the office that he then held -- Mayor). [redacted] office address is [redacted] California [redacted] His office telephone number is [redacted].

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(3) I have received a telephone call from JOHN P. ELIA, a retiree, who states that he had a personal visit with then Supervisor DAN WHITE during the month of March, 1978. At the time, Mr. ELIA states, he (ELIA) was interested in pursuing the possibility of recalling Mayor MOSCONE. But in the discussion with WHITE, ELIA states, WHITE said not to worry, because he was going to get rid of the Mayor, Supervisor MILK, and [redacted] one way or another, in due time. (I immediately asked an attorney I know, in the city from which Mr. ELIA telephoned, to obtain a written statement from him, and to forward it to me. He did. Attached is the original statement -- I have kept a copy.) Today I received another telephone call from Mr. ELIA, who is again in a hospital, he states. He says he is willing to take a lie-detector test as to this account of his conversation with WHITE. (When I questioned Mr. ELIA about what Mr. WHITE's problem might have been with then [redacted] ELIA stated that it included her support of Gay Rights. I have never met Mr. ELIA, however ROBERT McCARTHY, Esq., a former Deputy District Attorney in this County, has. He states that Mr. ELIA was one of a few retirees who quite often attended Mr. McCARTHY's trials, and that he recalled that ELIA lived in the Tenderloin while in San Francisco, and had occasional financial and health problems. Mr. McCARTHY does not believe that Mr. ELIA is psychotic, but cannot say that he would either believe or disbelieve such an account as given by Mr. ELIA. He does not recall any such account from Mr. ELIA being given to him.

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We are continuing to collect such information as may be helpful to the prosecution.

Sincerely,

  
JOHN ESHLEMAN WAHL

JEW:ma

cc: Mr. Joseph Scott Smith, Executor of the Estate of Harvey Milk

[redacted] Assistant Attorney General  
[redacted] Gen. Litig. & Advice Section

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b7C





June 28, 1983

TO WHOM IT MAY CONCERN:

I, the undersigned, am the Chief Deputy Registrar of Voters of the City and County of San Francisco, State of California.

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I certify that on June 28, 1983, [redacted] of my staff presented me with copies of the Declaration of Intention of George Moscone to run for Mayor and Harvey Milk to run for Supervisor. The records show that these Declarations were filed during 1978.

If called as a witness I could competently testify to the foregoing facts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true, and that this is executed at San Francisco, California, on June 28, 1983.

A handwritten signature in dark ink, appearing to read "Michelle Corwin", written over a horizontal line.

MICHELLE CORWIN  
Chief Deputy Registrar of Voters

1978  
CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF  
REGISTRAR OF VOTERS  
CITY HALL

SAN FRANCISCO, CALIFORNIA 94102

Declaration of Intention

I, GEORGE R. MOSCONE

do hereby declare my intention to become a candidate

for the office of MAYOR

of the City and County of San Francisco at the forth-

coming election to be held NOVEMBER 6 19 79.

*George R. Moscone*  
Signature

Room 200, City Hall, San Francisco  
Address

558-3456

PHONE

OFFICE OF  
REGISTRAR OF VOTERS  
CITY HALL  
SAN FRANCISCO, CALIFORNIA 94102

DECLARATION OF INTENTION

BY

I, Harvey B. Milk

do hereby declare my intention to become a candidate

for the office of Supervisor, District # 5

of the City and County of San Francisco at the forth-

coming election to be held November 6, 1979.

Harvey B. Milk

Signature

18 HENRY STREET, S.F. 94114

Address

558 - 2145

PHONE

NAME

b6  
b7C

OFFICE

filed 5/19/81  
SUPERVISOR DIST

DISTRICT ATTORNEY

SUP DIST-5

MAYOR

MAYOR

MAYOR

MAYOR DIST-5

SHERIFF

MAYOR

MAYOR

MAYOR

TIMOTHY DIST-1

MAYOR

MAYOR

MAYOR

MAYOR

MAYOR

MAYOR

SUP DIST-5

SUP DIST-1

MAYOR

SHERIFF

SUPERVISOR DIST

SUP DIST

D.A.

SUPERVISOR DIST-

SUPERVISOR this

MAYOR

SHERIFF

MAYOR

MAYOR

MAYOR

SUPERVISOR DIST-5

SHERIFF

SUP

New Address:  
1600 F St. Suite 200  
Bakersfield, CA 93301

DONALD C. DUCHOW  
ATTORNEY AT LAW  
1801 H STREET, SUITE 270  
BAKERSFIELD, CALIFORNIA 93301  
(805) 327-8959

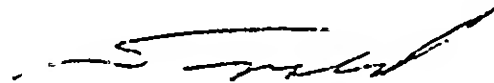
June 29, 1983

Mr. John Wahl  
Attorney at Law  
1232 Market Street  
San Francisco, CA 94102

Dear John:

I went to see Mr. Elia and obtained the enclosed statement from him. He is going to St. Francis Hospital in Santa Barbara and will have surgery on July 6th. He expects to check into the hospital on July 4th and may be reached by telephone the 4th, 5th, or after the 6th. He states that he will be in contact with you and is quite anxious to help you in any way he can on your case.

Sincerely yours,



Donald C. Duchow

DCD:dt

encl.

JOHN P. ELIA  
P.O. Box 904  
SAN BERNARDINO  
CALIFORNIA 92402

JUNE 28 1983..

"DEAR SIR"

AS I SAID ON PHONE JUNE 28. 1983 - 245 PM -  
I SWEAR - IN ANY COURT ROOM - THAT ON MARCH. ? 1978  
EX SUPERVISOR DAN WHITE DID TELL ME - QUOTE WHITE  
JOHNIE - DO NOT WORRY - LATER IN YEAR - 1978 - ONE WAY  
OR OTHER - [REDACTED] MIKE MOSCONE I GOING TO  
[REDACTED] RID OF THEM - I PROMISE THEY NEVER BE AROUND ANY MORE  
UNQUOTE - MY REASON TO MEET WHITE - FOR REASON  
THAT FAIR

I'LL BE IN ST FRANCIS HOSPITAL AT  
SANTA BARBARA FOR A WEEK - I'LL COME TO YOUR  
OFFICE - SOON AS I'M ABLE

I SWEAR THIS IS THE TRUTH -  
I NEVER MET DAN WHITE TILL MARCH 1978 - AND  
AFTER OUR TALK - I NEVER CAME TO SEE WHITE  
I DID WANT LATE MAYOR GEORGE MOSCONE  
ABOUT AUGUST 1978 - ON NOV. 27 - 1978 - I TOLD  
THREE POLICE OFFICE WHAT I BELIEVE TO BE FOR  
MAYOR - COPS JUST LAUGH - ONE I KNOW AS [REDACTED]  
STATION BY CROSS WALK AND DRANKING ON POLK ST.

Sign June 28 - 1983

JOHN P. ELIA

b6  
b7C

## FEDERAL BUREAU OF INVESTIGATION

1Date of transcription 9/6/83

[redacted] Assistant United States Attorney (AUSA),  
Northern District of California, held a meeting with Special Agent  
[redacted] and Federal Bureau of Investigation (FBI)  
Supervisor [redacted].

AUSA [redacted] made available a copy of a letter from  
Attorney John Eshleman Wahl, dated July 15, 1983.

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A copy of this letter is attached to and made a part  
of this FD-302, consisting of eight pages.

AUSA [redacted] advised that the U.S. Attorney Joseph P.  
Russoniello requested that Mr. John P. Elia be interviewed.

Investigation on 9/6/83 at San Francisco, California File # SF 44C-2178 -1  
by SUPV [redacted] AND  
SA [redacted] MRM/rmw Date dictated 9/8/83

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SF 44C-2178  
MWM/rmw

1

A review of the indices of the San Francisco Federal Bureau of Investigation Office shows no reference to John P. Elia.

There are numerous references in the San Francisco indices to the victims, in that they are, or were, public figures.



**AIRTEL**

TO: DIRECTOR, FBI

DATE: 9/8/83

FROM: SAC, SAN FRANCISCO

ATTENTION: CRIMINAL INVESTIGATIVE DIVISION  
CIVIL RIGHTS UNIT

- \* 1. ☒ initial submission \_\_\_\_\_ supplemental submission \_\_\_\_\_ revision \_\_\_\_\_
- \* 2. File No: 44C-2178 (include alpha)
- \* 3. Status: C (P - pending, P\* - pending inactive, C - closed, RUC - referred upon completion)
- \* 4. Title: DAN WHITE - SUBJECT;  
MAYOR GEORGE MOSCONE - VICTIM (DECEASED),  
SUPERVISOR HARVEY MILK - VICTIM (DECEASED),  
 - VICTIM;  
JOHN ESHLEMAN WAHL - COMPLAINANT;  
CIVIL RIGHTS - VOTING LAWS (C)

b6  
b7C

Re: U.S. ATTORNEY REQUEST.

5. If Title changed, show previous Title:

\* 6. TYPE OF CASE: (check one)

- |                                           |                                      |                                   |                                               |
|-------------------------------------------|--------------------------------------|-----------------------------------|-----------------------------------------------|
| A. <input checked="" type="checkbox"/> CR | D. <input type="checkbox"/> CRA64-PE | G. <input type="checkbox"/> CRIPA | J. <input type="checkbox"/> FRS               |
| B. <input type="checkbox"/> CRA64-E       | E. <input type="checkbox"/> CRA64-PF | H. <input type="checkbox"/> DIH   | K. <input type="checkbox"/> ISS               |
| C. <input type="checkbox"/> CRA64-PA      | F. <input type="checkbox"/> CREL     | I. <input type="checkbox"/> ECOA  | L. <input type="checkbox"/> PRIV. ACT - CRIM. |

7. AGENCY TYPE: (check one)

- |                                                 |                                                       |
|-------------------------------------------------|-------------------------------------------------------|
| A. <input type="checkbox"/> City-County Jail    | F. <input type="checkbox"/> Sheriff's Office          |
| B. <input type="checkbox"/> Federal Agency      | G. <input type="checkbox"/> State Police - Hwy Patrol |
| C. <input type="checkbox"/> Police Department   | H. <input type="checkbox"/> Other                     |
| D. <input type="checkbox"/> Prison/Penitentiary | I. <input checked="" type="checkbox"/> Not pertinent  |
| E. <input type="checkbox"/> Private Security    |                                                       |

8. AGENCY NAME: \_\_\_\_\_ (20) STATE: \_\_\_\_\_ (use 2-char. abbrev.)  
(omit if "Not pertinent" checked above):

\* 9. ACTION: UACB;

- |                       |                                                 |                                                        |                                                           |
|-----------------------|-------------------------------------------------|--------------------------------------------------------|-----------------------------------------------------------|
| (check if applicable) | A. <input type="checkbox"/> LHM enclosed        | C. <input checked="" type="checkbox"/> Report enclosed | E. <input type="checkbox"/> No further action being taken |
|                       | B. <input type="checkbox"/> LHM being submitted | D. <input type="checkbox"/> Report being submitted     | F. <input type="checkbox"/> FD-376 (enclosure to LHM)     |

\* 10. Further action: A. ☐ investigation instituted  
B. ☐ investigation continuing  
C. ☒ investigation completed

11. Copy of above submitted to: (check as many as applicable)

- A. ☒ USA \_\_\_\_\_  
B. ☐ Secret Service  
C. ☐ BATF  
D. \_\_\_\_\_ (15) (other - specify)

2 - Bureau  
1 - San Francisco  
MWM/rmw  
(3)

SEARCHED \_\_\_\_\_  
SERIALIZED EW  
INDEXED \_\_\_\_\_  
FILED RM

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b7C

Enclosures

(ATTACHMENT A)  
FBI/DOJ

44C 2178.3

F. O. File # 44C-2178Victim MOSCONE/MILK/

12. SUBJECTS (number): A. \_\_\_\_\_ Amer. Indian \_\_\_\_\_ Male \_\_\_\_\_ Female  
B. \_\_\_\_\_ Asian \_\_\_\_\_ Male \_\_\_\_\_ Female  
C. \_\_\_\_\_ Black \_\_\_\_\_ Male \_\_\_\_\_ Female  
D. \_\_\_\_\_ Hispanic \_\_\_\_\_ Male \_\_\_\_\_ Female  
E. 1 White 1 Male \_\_\_\_\_ Female  
F. \_\_\_\_\_ Other \_\_\_\_\_ Male \_\_\_\_\_ Female

If "Other" please specify: \_\_\_\_\_ (15)

13. VICTIMS (number): A. \_\_\_\_\_ Amer. Indian \_\_\_\_\_ Male \_\_\_\_\_ Female  
B. \_\_\_\_\_ Asian \_\_\_\_\_ Male \_\_\_\_\_ Female  
C. \_\_\_\_\_ Black \_\_\_\_\_ Male \_\_\_\_\_ Female  
D. 3 Hispanic \_\_\_\_\_ Male \_\_\_\_\_ Female  
E. 2 White 2 Male 1 Female  
F. \_\_\_\_\_ Other \_\_\_\_\_ Male \_\_\_\_\_ Female

If "Other" please specify: \_\_\_\_\_ (15)

14. Other descriptive data re victims: \_\_\_\_\_ not applicable

If applicable (number): A. \_\_\_\_\_ under 18 C. \_\_\_\_\_ handicapped  
B. \_\_\_\_\_ over 62 D. \_\_\_\_\_ institutionalized

15. Matter type (use best description, check more than one if applicable):

A. ☐ brutality type \_\_\_\_\_ (15) (i.e., shooting; beating)  
B. ☐ nonbrutality  
C. ☐ death of victim  
D. ☐ suicide method \_\_\_\_\_ (15) (i.e., hanging, slashed wrist)  
E. ☐ known extremist group type \_\_\_\_\_ (15) (i.e., Klan, Nazi, JDL)  
F. ☐ suspected ext. group type \_\_\_\_\_ (15) (i.e., Klan, Nazi, JDL)  
G. ☐ cross burning  
H. ☐ migrant victim  
I. ☐ violence to property type \_\_\_\_\_ (15) (i.e., arson, shooting)  
J. ☐ ISS matter type \_\_\_\_\_ (i.e., peonage, enticement, servitude, other slavery)  
K. ☒ other explain \_\_\_\_\_ (25)

\*16. Synopsis of Complaint - Date of initial complaint 9/6/83

In November, 1978, past San Francisco Supervisor Dan White shot and killed San Francisco Mayor George Moscone and Supervisor Harvey Milk. White was subsequently tried and sentenced to prison. He is eligible for release from prison in early 1985. A Civil Rights complaint has been filed with the U.S. Attorney's Office, Northern District of California, alleging that White denied Mayor Moscone and Supervisor Harvey Milk the right to re-election.

\*17. Indices: (check one) ☐ negative ☒ positive (if positive explain in body of report/LHM)

Remarks/Administrative

(Mount Clipping in Space Below)

# The Dan White file

## assassin's legacy

### A moment of madness changed San Francisco forever

By Lynn Ludlow

Examiner staff writer

First of five parts

**W**ILLIE BROWN could have told them about the politics behind Dan White's bullets.

After all, the San Francisco legislator was close at hand during the City Hall killings of Mayor George Moscone and Supervisor Harvey Milk on Nov. 27, 1978.

Oddly, his name didn't show up in official reports, trial testimony or anywhere else in the Dan White file. Now, the powerful speaker of the Assembly, Brown told Examiner reporter Dennis J. Opatry last week, "I

was the last person to see George before Dan White killed him."

Brown and Moscone had talked about the profound change that was about to take place in San Francisco politics. Moscone planned to replace White on the Board of Supervisors, giving the mayor a 6-to-5 majority of liberals and progressives.

The killings changed the equation, but the politics of assassination rarely came up during White's trial. It turned instead on psychiatric testimony and the jury's understanding of what amounts to reasonable doubt.

Acquitted of murder by the jury, White will try to find anonymity after he completes his manslaughter sentence on Jan. 6.

Three days later, if re-elected, as expected, Mayor Feinstein will take the oath of office for a second full term. It will bring her to national notice as host to the Democratic National Convention in July at the George R. Moscone Center.

By then the Reagan administration will have decided whether to go ahead with belated federal charges against White for killing his victims because they were candidates.

This is under review by the U.S. attorney's office. Because the FBI hasn't been asked into the case, and may never be, its agents haven't asked Brown and others about the political context of a double assassination five years past.

It's an anomaly typical of the legacy of these assassinations, which still includes unanswered questions, un-

resolved issues and wounds as yet unhealed in the body politic.

After just 10 months as a novice legislator, White abruptly resigned as the supervisor for District 8 on Nov. 10, 1978. He blamed financial and family pressures.

"He seemed very relieved," said John Molinari, a supervisor since 1971. "It was as if a heavy burden had been taken from his back."

The euphoria didn't last long. White was urged to stay on the board. Relatives and friends volunteered to help with his financial problems. The board was really split against George, 6 to 5," said Molinari. "There was an awful lot playing on this resignation."

Moscone assured White he could get his job back, then backed off and took a political perspective. The mayor said he would consider various candidates, adding that White would be the best to know.

Moscone's final day began with a detour.

A platoon of pro-Dan White demonstrators from the Outer Mission and the Portola districts had converged on the Polk Street steps of City Hall with petitions. Moscone's funeral passed.

White's wife, Denise Apar, called him at home and said, "The mayor

(Indicate page, name of newspaper, city and state.)

Date: 9-6-83

Edition: Final

1 S.F. Examiner  
San Francisco, Ca.

Title:

Character:

or

Classification:

Submitting Office: SF

Indexing:

ditto

With her next call, after the mayor refused to come out and see the demonstrators, White asked her to drive over and pick him up.

Moscone didn't phone White. Instead, he called a press conference to announce that White's seat would go to Ron Horanzy, then a federal real estate official.

White told Apar he wanted a straight answer from Moscone.

In the meantime, Moscone had tried to phone Assemblyman Art Agnos, D-San Francisco, who had suggested Horanzy's name. Agnos keeps the phone message slip framed.

Moscone also missed Lois Salisbury and Robert Gnaizda of Public Advocates, the law firm that had just begun a federal court trial on discrimination by race and sex in the

|                     |         |
|---------------------|---------|
| SEARCHED            | INDEXED |
| SERIALIZED          | FILED   |
| SEP 22 1983         |         |
| FBI — SAN FRANCISCO |         |

44C-2178-4



Police Department. Without White's vote in opposition, Horanzy's reappointment would mean probable approval of an out-of-court settlement involving quotas, timetables and \$2.5 million in damages to the plaintiffs.

On the other side of the street, Feinstein prepared for the 11 a.m. meeting of the Board of Supervisors. White had supported her re-election also by a 6-5 margin, to the board presidency. She wanted to talk to

Horanzy, who had been in the previous week lobbying against White's reappointment, charged with a 10-5 margin. Nobody noticed when Brown

They discussed the possible implications of Jonestown, where 913 members of Peoples Temple died nine days earlier. The Rev. Jim Jones, who inspired the suicides, had been Moscone's appointee as president of the city Housing Authority.

They talked of Moscone's upcoming birthday. Then the mayor mentioned Dan White.

In the meantime, the ex-supervisor slipped through a basement window in City Hall, encumbered by a .38 Chief Special revolver.

"George wanted me to meet Don Horanzy," said Brown. "He told me to go out to the outer office and introduce myself."

As for Moscone, "He was going to give Dan White the final word on the very bad news."

By then, White had come into the outer office, missing Horanzy and ignoring his little band of demonstrators. He strode past the reception desk and asked Cyr Copertini, the mayor's appointments secretary, if he could talk to Moscone.

He waited patiently.

He asked for a glass of water.

When Copertini told him he could see Moscone, White went to the mayor's office.

The door closed. Brown said he shook hands with Horanzy, then walked down the inner hallway.

Frank Falzon, the homicide inspector who later headed the investigation, and Tom Norman, who prosecuted White, said last week that their records and files show nothing about Brown and his role as Moscone's friendly visitor.

Copertini heard loud thuds.

Brown had reached the room

when he heard a terrible commotion. He came back up the stairs, he said, and in the corridor he found Rudy Nothenberg, then the deputy mayor.

Nothenberg said, "I think he's done it to the guy."

Brown said, "Done what?"

Then he found the mayor in the antechamber, shot to death.

By then, White was killing Milk.

Reported to be the first acknowledged homosexual to win election to legislative office in this country, the man who called himself the Mayor of Castro Street had become accustomed to death threats.

"Harvey Milk expected his murder," said Harold Burt, his successor. He mentioned it a few hours before his election.

When White marched into the supervisory offices, he said, "Say, Harv, can I see you for a minute?"

The answer was "Sure, Dan."

Feinstein heard a shot. She thought White had killed himself. Then she heard four more.

She would later testify:

*I knew I had to move, and I was trying to force my brain and my body to function together and move out of the chair.*

*And I had gotten out of my chair when I saw Dan leave, and I said, "Dan?" And he went right by. And the door closed.*

*I then smelled the gunpowder.*

She found Harvey Milk in White's office. It was horror. Two hours later, White would sob to interrogators that he was trying to discuss his reappointment situation with Milk. Milk didn't know the discussion was pointless; White had just executed the only person who could have reappointed him.

Feinstein won't read this article. She said she still can't look at anything that brings back the killings.

But if politics led to the assassinations, their legacy is equally political.

Feinstein shuddered behind the big desk that was once Moscone's.

She said, "The wounds are still very, very fresh."

Her sponsorship of anti-handgun legislation, a direct result of the day she found Milk, would lead to last spring's recall election sponsored by leftist pro-gun elements. The recall failed so dramatically that she became next to Brown, the most powerful politician in town.

It's a dramatic turnaround for Feinstein, whose career had stalled after she came in third in two mayoral elections behind Joseph L. Alioto (1971) and Moscone himself (1975). Re-elected to the Board of Supervisors for a third term in the district elections of 1977, she was said to be considering an appointment in the Carter administration. As board president, she became acting mayor upon Moscone's death. Her fellow supervisors elected her to complete Moscone's term, and she won election by the people in 1979.

Today she has become one of the nation's best-known mayors with apparently enough support at home to waltz through this November's re-election campaign.

She began as mayor by trying to thwart, as she put it, the "assassin's will."

She named Harry Britt to Milk's seat, for example, and it cost her some legislative victories. Britt and Milk shared similar politics.

Nothenberg became manager of public utilities.

Moscone appointees remained on boards and commissions.

On the other hand, change in the Police Department was dramatized after the White Night riot of May 22, 1979—a violent expression of outrage at the jury's manslaughter verdict.

Police Chief Charles Gain, an outsider of liberal views who had been Moscone's most controversial appointment, was eventually replaced. Today he operates a trailer park.

The case destroyed the political career of Joseph Freitas, the district attorney when White's jury brought in manslaughter convictions.

Although Freitas lost in a runoff to Arlo Smith, then a state assistant attorney general, his opponents also included a former deputy, Joseph Russoniello.

President Reagan later named Russoniello the U.S. attorney in San Francisco, where he is now studying the record of White's trial. The question is whether the case qualifies for prosecution under a civil-rights law intended to end racial intimidation in Southern elections.

The federal prosecution was proposed by Milk's attorney, John Eshleman Wahl, who contends the prosecutor went easy on White.

The prosecutor, Norman, furiously denies it. He remains in the top rank of senior trial deputies under Arlo Smith, who had been deeply critical of the prosecution during campaign speeches.

Norman said he happened to meet one of the White jurors in the Tower Market in San Francisco. It wasn't a pleasant reunion.

She said we should have told her how soon White would get out," he said. "I said she should have listened to the judge's instructions."

When surveyed by Examiner reporter Carol Pogash, most of the jurors remained defensive about their deliberations and unhappy about reactions from friends and neighbors. But they stuck to their decision.

"We just want to put it behind us," said one juror, gently closing the door.

The White case is blamed also for contributing to the demise of district elections of supervisors, a reform measure enthusiastically enacted by initiative in 1977. Supposed to enhance representation of the neighborhoods, it brought White and Milk into public office. Citywide elections were restored two years later with a referendum memorable for the disinterest of voters. And some analysts say the apathy has become permanent.

The verdicts also produced cynicism over what is perceived as unequal punishment under the law.

The late Superior Court Judge Walter Calcagno gave

## Quotes from the Dan White file

Well, the mayor said, and I watched him say it, that, "I'm going to reappoint you. You're a hard-working man, and you deserve the job. A man has a right to change his mind. And if it comes to a legal question as to whether I should appoint you, I will."

There was a letter that the mayor wrote to Dan White that was directly contrary to what Mr. Moscone had said to Dan White himself.

Denise Aparicio  
Chief legislative aide to White

### THE MAYOR'S LETTER

Nov. 20, 1978.

Dear Dan:

This is my response to your letter of Nov. 20, 1978. The last thing I want to do is deprive the citizens of District 8 of their necessary representation before the Board of Supervisors.

As I told you this past Saturday in my office, however, I have received a great many communications from the residents of District 8, some from your political opponents, others from your past supporters, which have urged me not to reappoint you to the Board of Supervisors.

As I informed you this past Saturday, I am going to take an additional week in which to review this situation, and to receive further communications on the subject from the citizens of District 8, some of which may conceivably benefit you.

But I must reiterate that I have not made a commitment of any kind to appoint you or any other Franciscan to the position of Supervisor from District 8.

Sincerely,  
George R. Moscone, Mayor

White the longest possible sentence: Seven years, eight months, for the killing of two men by their frustrated political opponent. Reduced by time for good behavior and time in county jail, the total term became five years, one month and eight days.

Assemblyman Byron Sher, D-Palo Alto, is carrying a bill that would increase the maximum manslaughter sentence to 11 years.

More than 20,000 signatures have already been collected on petitions aimed at blocking White's parole, but

White was among the first criminals to be convicted under provisions of a 1978 reform law. It replaced the indeterminate sentence with set terms. Under this law, parole is automatic, and the governor's office announced last week that it won't intervene.

The White verdicts also brought a legal separation of the uncomfortable marriage of psychiatry, which is supposed to be one of the healing arts, and the adversary system of the law, which isn't.

Since the 1940s juries have been hearing psychiatrists



solemnly contradicting each other over such questions as whether a fifth of bourbon would diminish a culprit's capacity to premeditate. Juries rarely agreed.

Diminished capacity, a phrase which cut at least a decade off White's sentence, was thrown out by statute in 1981. This was confirmed by the voters with the overwhelming passage in June 1982 of Proposition 8, the Victims' Bill of Rights.

*Tomorrow: the Irish martyr*



Examiner/Bob McLeod

**Victims of the assassin's rage, Milk and Moscone shook hands after gay rights ordinance became law**

(Mount Clipping in Space Below)

# It was ask no quarter, give none for the man who turned assassin

By Lynn Ludlow  
Examiner staff writer

**W**HEN DANNY WHITE was just a young boy, four neighborhood bullies chased him home.

He ducked in the house.

His dad shoved him outside and told him to fight like a man.

The incident, noted by one of the psychiatrists who would later testify in his trial, helped explain why White grew up as someone who "tended to be rigid, unrealistic in the sense of seeing things in black and white, in terms of good and bad."

Daniel James White, no longer boyish, turned 37 last week in the state Correctional Training Facility in Soledad, while awaiting his parole date on Jan. 6.

He was part of the baby boom, born in 1946 in Long Beach, where his father was stationed in the Navy. He was the second of nine children.

White grew up in Visitation Valley, attending St. Elizabeth's Grammar School, Riordan High School and Wilson High School. An indifferent student with low-average grades and a short attention span, he was mainly preoccupied with baseball. Years later, when asked

by his probation officer, he could not recall a favorite academic subject.

However, his IQ score five years ago was 118, "high average," with a vocabulary in the 90th percentile. His father, Charles White, a San Francisco fireman, was said to be "hard-working, outgoing, well-liked and considered honest and full of fun." Ill for nearly two years with stomach cancer, he died at age 43 when White was 17.

Dr. Martin Blinder, one of the psychiatrists who would testify in White's behalf, said the father's death had a profound effect on a youngster who tended to keep his feelings to himself.

"I never had a chance to know him," White told Blinder, "and now I never would."

(Five years later, his mother married a widower with eight children of his own. White had eight brothers and sisters and eight more stepbrothers and stepsisters.)

As a transfer student at Wilson High, White found himself in an occasional fist fight with other students, black and white. Captain of the football team (flanker back and linebacker) and of the baseball team (shortstop), he dreamed of a career in professional baseball. He would later blame a leg injury for thwarting his hopes.

In the fall of 1964, others of his generation were diverted by the

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*Dan White*

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Free Speech Movement, the Beatles and experiments with LSD. White dropped out of City College, enlisted in the Army, volunteered for paratrooper training in Georgia and wound up with the 173rd Airborne in Vietnam.

He would talk later of his shock at seeing Vietnamese bodies strewn alongside the roads. He was surprised also "by the lack of affection and sympathy of the Vietnamese people for the Americans."

Back home again, White spent six months relaxing in San Rafael, then worked for PG&E while waiting for an opening in the Police Department.

*"The year 1969 was a very difficult time for police officers in San Francisco as it was a period of unrest in the black community as well as social unrest in the community in general over the war in Vietnam...."*

*"Dan always handled these difficult — and potentially dangerous situations in a calm and professional manner."*

Police Officer James Sullivan

He lived then in a dingy apartment in the Mission District. The furniture consisted of a mattress.

White was an officer from January 1969 to October 1970, excelling on a department softball team. He was most valuable player in a state-

wide police tournament, where an umpire called him the best softball player he had ever seen. Then he quit the department.

White would say later, "I guess I'm something of a romantic. I'm a great Jack London fan, and I do some writing, mostly short stories. So I hitchhiked around the country and then up the Alcan Highway to Alaska."

White found work as a truant officer in Anchorage. He liked Alaskans, "the last pioneers," but he drifted back to San Francisco.

He rejoined the police in September 1971. His performance ratings were average. He won two commendations, but he quit again in May 1973.

Probation Officer Michael Pearcy said, "He stated that he left police work for several reasons, including the growing public distrust of police, a changing attitude from respect and confidence to one of anger and resentment by the people he sought to assist."

White quit for another reason. He told friends he had intervened at Ingleside Station when two other officers began to beat a handcuffed suspect. He filed a report and, according to Blinder, "was immedi-

ately frozen out of the camaraderie of the fellow policemen."

Then off he went, this time on jaunts to Alaska and Ireland, while waiting to be called for the next opening in the Fire Department.

In January 1974, he began the only job he ever really liked. He was valedictorian of the Fire Academy class, lived in a 20-foot sailboat in Sausalito and decided to enter the Golden Gloves boxing tournament. He lasted the full three rounds in the senior division against the national champ.

From the sailboat, which was furnished with a sleeping bag and a portable radio, he moved to the John Muir Apartments on Lake Merced. He bought a Porsche. In April 1976, he had met Mary Ann Burns, four years older than him. She had been an elementary school teacher in Japan and Germany before joining the San Francisco system.

"Everyone who ever worked with her thinks she is a wonderful teacher," said a colleague.

White told his probation officer that she is a "great girl" and "good woman."

They were married Dec. 20, 1976.

If he were allowed to live his life over, White would later say, he would have remained a fireman. People respected firemen, he said.

White had been introduced to Ray Sloan, a political consultant



from Contra Costa County. He encouraged the young fireman to run for the Board of Supervisors under the new scheme of elections by district.

It meant White had to move back to the Outer Mission from the John Muir Apartments in a more affluent part of town. As the newlyweds returned from their five-week honeymoon in Ireland, White began campaigning for the seat in District 8. It covered the Portola, Crocker-Amazon, Outer Mission and Visitacion Valley neighborhoods.

After White won a plurality in District 8 with 31 percent of the vote, the city attorney's office ruled that his fireman's job amounted to a conflict of interest. He resigned, losing an annual salary of \$18,000 and numerous fringe benefits. Supervisors were then paid half that amount.

Then Mary Ann White took maternity leave, causing further financial problems.

The baby is now 5 years old. His brother, conceived when White was permitted conjugal visits in prison, was born in June 1981. He is severely retarded with Down's syndrome, more commonly known as mongolism.

It was the summer of 1978 when the baby came home to a green bungalow on Shawnee Street,

which White had purchased for about \$70,000 the previous year.

Looking for a way to earn extra money, White made a deal with Warren Simmons, developer of Pier 39, for what appeared to be a profitable little fast-spud stand called the Hot Potato. It drew criticism because Simmons was then doing a lot of business with City Hall.

White and his family staffed the place. After White's trial, it became the Potato Place, and is still operated in the name of Mary Ann White and Dan's brother, Thomas White.

While a supervisor, White told friends, he felt impotent and frustrated. He would say later that he hated political compromise and expediency.

When he resigned from the Board of Supervisors without consulting anybody, not even his wife, White told friends he felt as if an enormous burden had been lifted from his shoulders.

He wanted to be helpful to people and yet he wanted to run away from them. That did not make any sense to me.

Inspector Frank Falzon



While campaigning for his supervisor's seat, he kept in shape by running. The City Hills. In his wife, Mary Ann.

Examiner file photos



As a student, Dan White got low-average grades, and later he couldn't recall an academic subject that interested him. He excelled at sports, however, and, as a professional fighter, he was a national Golden Gloves champion.



(Mount Clipping in Space Below)

# The Dan White file

## An assassin's legacy

# Was it hatred of gays or revenge?

By Lynn Ludlow  
Examiner staff writer  
Third of five parts

**F**ROM "VIOLENT MEN," a novel this year by Daniel Curzon, describes a stout-necked, foul-mouthed ex-cop who is about to be paroled from Soledad for killing "the mayor and Harvey."

Brad Short, as Curzon calls him, is the target of an assassination scheme by vengeful gays. An excerpt:

"I heard who's trying to kill me. The faggots!" Brad's eyes gleamed with hatred. "Well, just let 'em try!" He punched his fist into the meat of his hand, filling the room with the dull sound of flesh on flesh.

The \$8.95 paperback, published by the International Gay News Agency, reflects a prevalent series of speculations, rumors and assumptions about Brad Short's real-life prototype, Dan White.

The result is a two-dimensional nightmare about a brutal slob with a violent hatred for homosexuals. According to this profile, the frustrated politician may have shot Mayor George Moscone in a rage — but he tracked down Harvey Milk because the supervisor was gay, and proud of it.

But the story of White's relationship with Milk suggests a motive based principally on politics, not homophobia as such.

Now a model prisoner at the state Correctional Training Facility at Soledad, where his manslaughter sentence will end Jan. 6 after slightly more than five years, White refuses to answer questions about his motives or, for that matter, anything else.

Testimony in the 1979 trial, however, shows White felt betrayed by Milk in a context of political conflict.

At the end, they had stopped speaking to each other, but the relationship began warmly enough in spite of differences in age, background, education, politics and sexual orientation.

Both men were political outsiders who shook thousands of hands, rang hundreds of doorbells and won seats on the reorganized Board of Supervisors in November 1977. It was the first election by district, a reform that was supposed to reflect San Francisco's diversity and shrink the influence of downtown interests, developers and corporations.

As a candidate, White was quoted in a brochure as saying he would not be forced out of town by "splinter groups of radicals, social deviates and incorrigibles."

Later, he explained to Milk that "deviates" referred to addicts.

"He's almost the antithesis of (the) hard-line conservative portrayed by the media," said Milk after their inauguration in January 1978. "I was pleasantly surprised... He's warm, polite and dedicated — and doesn't seem at all boxed in by one line of thinking."

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White's legislative aide, Denise Aparcar, would say: "As a matter of fact, they were good friends in the beginning, and they liked each other personally, very much..."

Randy Shilts, author of "The Mayor of Castro Street," quotes several of Milk's friends who said he took a tolerant view toward White's politics. To Dennis Seay, Milk said: "Ev-

eryone can be educated and helped." To Michael Wong: "White? I like Dan. He's learning, and he and I talk a lot. Give him time."

White had already spoken out in favor of Milk's gay-rights ordinance. As a paratrooper in Vietnam, he said, "I found a lot of the things that I had read about, that had been attributed

to certain people — blacks, Chinese, gays, whites — just didn't hold up under fire, literally under fire."

(White would later tell psychiatrists that as a supply clerk he had seen no combat beyond an occasional sniper round.)

"The sooner we leave discrimination in any form behind," White said,

"the better off we'll be."

The remark in March 1978 was the high point of the friendship of Milk and White.

What happened next is illustrated by White's behavior at a casual softball game.

Supervisor John Molinari remembers the game at Funston Park be-

tween the mayor's office and the Board of Supervisors. The recreation complex was later named for Moscone.

"It was supposed to be fun," said Molinari. "There were a few cans of beer. George had to go somewhere,

so he showed up in his suit."

The score was 20 to 19, but Molinari doesn't remember who won and doesn't care.

White would remember. He may have been out of his league in City Hall, but this was literally his turf.

Molinari: "And Dan, he was all over the field, taking it real seriously. He slammed his glove on the ground. He argued with the umpire, who happened to be a judge. He was certainly a good athlete, a great athlete, but..."

White hated to lose. He never trusted Milk again after the vote on the Youth Campus.

During the campaign in his district, which encompassed most of the neighborhood south of Interstate 280, White had made the Youth Campus his No. 1 promise.

The plan called for a non-profit corporation with state and federal funds to establish a residential treatment center for as many as 60 emotionally disturbed teen-agers, youngsters who were otherwise shipped out of town to state hospitals or treatment centers.

The site was in the Portola District, the Convent of the Good Shepherd's boarding school for wayward girls. It had closed.

The Youth Campus was warmly supported by the local psychiatric community. It was opposed passionately in the Portola District, where residents feared that the teen-agers might jump the fence.

Milk had implied to White that he would support him in opposing the city contract. Then he changed his mind.

"We have to put aside our fears," said Milk, who voted for the Youth Campus. White was left a 6-to-5 loser. Moscone signed the bill, then dropped by the convent school to make a plea for "calm and reasoned judgment."

Although their friendship would never recover, White would include Milk in the invitations to the christening of his baby son — and Milk attended.

"It was just a political courtesy," said Scott Smith, Milk's lover and partner. "By then, Harvey didn't have any use for Dan."

Milk began referring to White as a closet case, but White's only on-the-record expression of anti-homosexual sentiments came in October. He opposed the routine closing of Polk Street for Halloween.

Supervisor Carol Ruth Silver would later say, "Dan White got up and gave a long diatribe, just very unexpected and very uncharacteristic of Dan, a long hostile speech about how gays and their lifestyle were — had to be contained, and we can't encourage this kind of thing, and..."

After White impulsively quit his supervisor's post on Nov. 10, then changed his mind, he went into the office of the deputy city attorney assigned to find out if he could rescind his resignation.

The phone rang. It was Harvey Milk, urging the lawyer to find some way to keep White off the board.

Milk told friends that Moscone would get a 65 majority on the board if he appointed someone closer to his progressive-liberal political views.

White's aides, who continued to use his office during the interim, must have overheard Milk as he lobbied loudly on the phone in his cubicle-sized office down the hallway.

Silver said, "Not only did Harvey beat Dan but laughed at him as well, boasted about it."

White would later tell Dr. Roland Levy, the prosecution's psychiatrist, that Milk was "masterminding the deal" to block his reappointment. He called Milk "the most devious board member."

On Nov. 27, the day another man was to be named by the mayor to White's seat, his aide Aparcar had been standing outside Moscone's office with a group of White's supporters from District 8. They wanted to deliver petitions to Moscone, urging him to reappoint White. She was informed that Moscone was out.

She would later say, "I noticed the side door to the mayor's office open and I saw Harvey Milk exit the mayor's private hallway there, in front..."

"I saw him laughing, and I saw him being patted on the shoulder by someone in the door jamb area."

She called White, who had spent the weekend brooding at home. She mentioned the hallway incident.

Was he angry?

"Definitely."

White asked her to pick him up.

He brought his gun.



Quoted from  
**The Dan White file**

"He's almost the antithesis of the hard-line conservative portrayed by the media. I was pleasantly surprised. . . .

"He's warm, polite and dedicated and doesn't seem at all boxed in by one line of thinking."

Harvey Milk, January 1978

"When we were married, Dan said he didn't know where we would end up or what we would be doing. But it would be exciting. So far he's been right."

Mary Ann White, January 1978

"Whatever Dan decided to do, he would completely dedicate himself to that. . . . Dan would never evade responsibility, deceive authorities or abuse any privileges.

"The shootings?

"Greatest shock of my life."

Fireman Donald Fredjane

"All my life I have been able to handle any problems by myself. If the going got tough, I just dig in hard."

"I guess this time it didn't work. The harder I dug in, the deeper I got. I had been in stress before as a policeman and soldier, but never broke, but I guess this time things got too much for me."

Dan White, to psychiatrist  
Martin Blinder while awaiting trial



Supervisor Harvey Milk talked city politics in his kitchen a few days after his election. About his killer, Dan White, he had this to say: 'Everyone can be educated. . . . White? I like Dan. He's learning, and he and I talk a lot. Give him time'

Examiner/Judith Calson

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# Section 245: the U.S. law that could put Dan White back in jail

**H**E DIDN'T WANT to second guess the prosecution of Dan White in 1979, but Joseph Russoniello told the voters then that he would have tried the case himself — if he had been San Francisco's district attorney.

A former deputy district attorney with nearly 200 criminal trials he was running against the incumbent, Joseph Freitas, in an election eventually won by Arlo Smith of the state attorney general's office.

Russoniello's campaign committee included Douglas R. Schacht, Dan White's defense attorney.

The candidate couldn't know then that he would become four years later, the middleman in an attempt to bring federal charges against White under the Civil Rights Act of 1968.

Russoniello, a Republican, was named in 1981 by President Reagan as the U.S. attorney in San Francisco.

And now he has a chance, may as attorney for the Milk estate, he, to face his campaign supporter, wrote to the White House. To President Reagan, with years of his own. Wahl said, "It is in the public interest to make sure that these political assassinations are not lightly punished."

The law says prosecution can be ordered only by the U.S. attorney general, William French Smith, or his deputy, Edward Schmults.

Because the statute requires prosecution within five years, the deadline is Nov. 27. That is the fifth anniversary of a sunny November morning, when White took his gun to City Hall and killed Mayor George Moscone and Supervisor Harvey Milk.

When White is paroled from state prison after the Christmas holidays, he will have served five years, one month and eight days. If indicted, tried and convicted under the Civil Rights Act of 1968, White could be sentenced to federal prison for two life terms. In effect, this means about 14 years or so before parole.

The possibility of a federal prosecution wasn't even raised until last April, when John Esheleman Wahl, who was attorney for the Milk estate, wrote to the White House. To President Reagan, with years of his own. Wahl said, "It is in the public interest to make sure that these political assassinations are not lightly punished."

The letter was bucked politely from the White House to Attorney General Smith, and then to formerameda County District Attorney Lowell Jensen, assistant attorney general for the criminal division.

On May 27, Wahl heard from Jensen's chief of litigation, Lawrence Lippe. He said Russoniello had been asked for his recommendation. Then a decision will be made, he said.

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He added an unusual comment, "We certainly can understand your disenchantment with the state sentence imposed on Mr. White, and we are appreciative of your interest and concern that justice be rendered in this case."

If Attorney General Smith or his deputy decide that the slayings of Moscone and Milk are covered by a law that one Justice Department spokesman has termed "complex and difficult," they must certify that prosecution "is in the public interest and necessary to secure substantial justice."

Russoniello, contemplating the recommendation he must make,

said: "There is no doubt that in a general sense, political activity is the *raison d'être* for the crime, but the statute protects certain specific activities."

The pertinent section of the U.S. Code reads (emphasis added):

#### TITLE 18, SECTION 245

(B) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with —

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from —

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(E) participating in or enjoying the benefits of any program or activity receiving federal financial assistance;

... shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than 10 years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

John Wahl said the language in the White case:

"Here's this macho All-American hero type doing one of the most cowardly murders you could think of, and not just because of violence. He killed them because they were effective politicians working within the system against

the interests of people he represents."

He cited the relevant language of Section 245 and said:

• Moscone and Milk had filed their intent to run for re-election, bringing them under the protection of the statute.

"White intended to prevent Moscone and Milk from qualifying for re-election," argued Wahl, "because he intended the natural and probable consequences of his acts."

• Because Moscone was mayor, he was "participating in or enjoying the benefits of any program or activity receiving federal financial assistance."

Wahl said federal funds would have helped support the Youth Campus, then proposed as a treatment center in White's district for emotionally disturbed teen-agers. White had failed legislatively to block the project, which was strongly supported by both the victims.

He also argued that the shootings amounted to interference with Moscone and Milk because they supported an out-of-court settlement of an anti-discrimination lawsuit brought against the Police Department. White opposed it strongly.

Double jeopardy isn't a barrier to prosecution under Section 245, said spokesman John Wilson for the U.S. Department of Justice in Washington, D.C. The U.S. Supreme Court has decreed that such prosecutions don't violate the constitutional ban because it's not the same crime even if the facts are essentially the same.

— Lynn Lurie



Examiner/Judith Carlson

JOHN ESHELMANN WAHL, ATTORNEY FOR MILK'S ESTATE  
He wrote to Reagan asking a federal trial for White.

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## An assassin's legacy

# Unanswered questions on the politics of murder

By Lynn Ludlow  
 Examiner staff writer  
 Second of five parts

**W**HEN DAN WHITE left his little Outer Mission home on Nov. 27, 1978, he brought to City Hall a loaded

caliber revolver, 10 extra hollow-point bullets and a book cover that escaped attention at the time.

The record shows that White refused at first to say anything to police inspectors after he killed Mayor George Moscone and fellow Supervisor Harvey Milk.

Instead, he anxiously told an officer to preserve the book cover.

If White had kept his original promise to refrain from any kind of statement to police, the only clue for investigators would have been the dust cover for a book.

The book is entitled "Ireland, A Terrible Beauty."

Its political significance, if any,

remains one of the questions as yet unanswered more than four years after a trial dominated by psychiatric testimony.

"A Terrible Beauty," however, is a phrase that may have some resonance as federal prosecutors consider belated charges against White for preventing his victims from running for office.

The murder trial of Dan White emphasized the flawed psyche of a rigid moralist said to have cracked under pressure. The verdict was manslaughter; his prison time will soon end.

Now he faces the possibility of a federal trial that would focus instead on the politics of assassination. Conviction could mean a life sentence.

With the approach of White's parole from state prison on Jan. 6, the Dan White file has moved to the desk of U.S. Attorney Joseph R. Rossi for investigation by a different jurisdiction of a different crime based on the same killings in City Hall in 1978.

An indictment, if any, would be brought under a federal civil rights law intended originally to protect election workers and candidates in the Deep South.

Under the Civil Rights Act of 1968, it's against the law to interfere forcefully with someone because he is a candidate for public office. Rossiello says "because" is a key word. White won't grant interviews or answer letters, but a review of his case produces abundant testimony

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and evidence that puts the assassinations into a political context.

The file includes:

- White's own admission of guilt to homicide inspectors, a sob-wracked statement memorable for White's anger and frustration over political matters.

- White's legislative record, which shows Milk and Moscone teaming up to humiliate White on measure after measure that he had promised to win for his constituents.

- Trial testimony from White's own witnesses, including psychiatrists and aides who described his outrage and dismay at what he perceived as the dishonest politics of compromise, expediency and betrayal.

The "Terrible Beauty" book cover was in White's pocket when he climbed into City Hall through a basement window. White would tell a psychiatrist that he didn't want to cause trouble later for the duty officer manning the metal detector at the main entrance. To the prosecutor, Thomas Norman, this was Premeditation Clue No. 1.

Then White discussed his reappointment with the mayor, who told him that for political reasons he would name someone else. White heard a roaring in his ears. He shot Moscone twice. The mayor fell, a cigarette still smoking in his left hand. White then fired two more dum-dum bullets into Moscone's brain.

White reloaded — which Norman calls another proof of premeditation — and hurried down the marbled corridor to his former office. He asked Milk to step inside.

Milk was heard to shout, "Oh no. Oh..." White shot him five times, including two times in the brain at short range. This time he didn't reload.

The "Terrible Beauty" book cover remained in his pocket as he ran out of City Hall, drove his aide's car to a now-obiterated Doggie Diner, phoned his wife at Pier 39 and went to St. Mary's Cathedral to wait for her.

When she arrived, he told her he had shot Moscone and Milk. Then she walked with him to Northern Station, a police citadel conveniently situated between the gay taverns of

Polk Street and the heartbreak no-tels of the Tenderloin.

He approached Officer Warren Overholt and pointed to his basket-weave Bianchi holster. "It's there," he said. "It's there." Overholt removed the Smith & Wesson Chief Special, still warm.

The book cover was taken by Officer Paul Chignell, who assumed it was a travel poster. White had cut off the flaps and the back, leaving only the title and the photograph of an Irish village.

He later testified that White appeared anxious about preserving it.

Today Chignell considers the item irrelevant.

"Who knows," he asks, "what goes through the mind of a madman?"

Nobody knew what to make of it. But White, as a two-time visitor to Ireland and a tireless student of its history, would have known that the phrase, "A Terrible Beauty," is drawn from the poetry of bloody rebellion.

The book itself is an interpretive photojournalism essay by Jill Uris, the photographer, and her husband, Leon Uris, author of the best-selling novel "Trinity," which deals with the martyrdom of an Irish patriot.

"Terrible Beauty" comes from Easter 1916, a poem written by William Butler Yeats after the doomed rising in Dublin that year. Its leaders, now heroic figures in modern Irish history, died in front of British firing squads.

As quoted in the Uris book, "Now and in time to be, / Wherever green is worn, / Are changed, changed utterly: / A terrible beauty is born."

Now and in time to be, / Wherever green is worn, / Are changed, changed utterly: / A terrible beauty is born.

Frank Falzon hadn't really known young Danny as a kid from the neighborhood, although they attended the same parochial school.

When White was a police rookie assigned to Northern Station, he joined the softball team that Falzon managed. He considered White to be a conscientious police officer, later a heroic fireman and finally a law and order politician whom he supported.

And now, all that was in the past. Homicide inspector Falzon found himself staring at a stranger who

looked like a zombie. "Why?" he asked White. "Why?" Falzon had more than a personal interest in the man who looked, as he put it, "destroyed" as he waited in a tiny interrogation room in the Hall of Justice.

A detective for eight years after five years in uniform, Falzon knew that he had but a few minutes to persuade White to confess. Representatives of the public defender's office were on the way. White stood but said nothing.

"He just shook his head," said Falzon. "His eyes were glassy, and he never gave any response."

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office were on the way. White stood but said nothing.

"He just shook his head," said Falzon. "His eyes were

glassy, and he never gave any response."

The detective would say later that he admired and

liked White, testimony that would prompt scapegoat

hunters to accuse him of botching the confession.

Falzon disagrees.

"I can honestly say that if it hadn't been for our

friendship," Falzon says, "I doubt very much if Dan would

have confessed to anyone else."

When White decided to talk, Falzon brought inspector

Eddie Erdelatz into the room as a witness, rolled the tape

and read White his Miranda rights. He allowed White to

ramble.

"I went in there cold," Falzon recalled. "In less than 50

minutes I had gone to City Hall, viewed the body in the

mayor's office, gone to Northern Station and then back to

the Hall. I wasn't privy to all the facts. I needed a narrative

to elicit facts to work off of."

In a 25-minute admission marked by convulsive shud-

ders and sobs, White accused his victims of devious

politics. They had thwarted his reappointment to the

superintendent's job that he had quit impulsively 13 days

earlier.

His victims were dishonest, he said. He wanted only to

do a good job.

"This was a political opportunity," he said, "and they over-

(ahh) going to denigrate me and my family (sob) and the

job that I had tried to do (uhh) and more or less hang me

out to dry," White said.

Prosecutor Norman took the confession to trial, con-

vinced the jury would return two first-degree murder

verdicts.

He said, "The case was so good that I could have

phoned it in."

With a distinguished record as one of the state's most

effective prosecutors, Norman said he never handled so

strong a set of facts.

He said, "The case was almost too good."

Falzon had gotten an almost complete confession — but

it backfired.

Jurors wept.

White's attorney called four psychiatrists and one

psychologist who put the blame on acute depression, a

form of mental illness said by one psychiatrist to be

aggravated by the defendant's consumption of Twinkies

and junk foods.

Sympathetic jurors discounted testimony that suggest-

ed premeditation.

The allegation of "special circumstances" had given

White a jury that excluded opponents of capital pun-

ishment.

"These people were necessarily more conservative," said Norman. "But they were representative of the type of jury I had always been comfortable with."

Norman still can't believe the jurors found reasonable doubt about White's capacity for malice and premeditation.

Given their instructions, this called for manslaughter verdicts, not murder.

The verdict set off a night of heavy rioting, mostly by gays who contended that the authorities had conspired to go easy on the former police officer.

Norman would say much later, "Needless to say, the verdicts were an incredible disappointment."

Falzon doesn't think "Terrible Beauty" was a coincidence.

When he was asked about it, Falzon speculated White had a reason when he initially refused to make a statement — and then asked Chignell to take care of the book cover with a title drawn from Irish rebellion.

If nothing else, says Falzon, it is yet another clue to premeditation.

Is it possible that White, who takes his Celtic heritage seriously, might have cast himself in the role of one of the political martyrs who fill the pages of Irish history?

Here is the end of the poem:

*And what if excess of love  
Bewildered them till they died?*

*I write it out in a verse,*

*MacDonagh and McBride*

*And Connelly and Pearse,*

*Now and in time to be,*

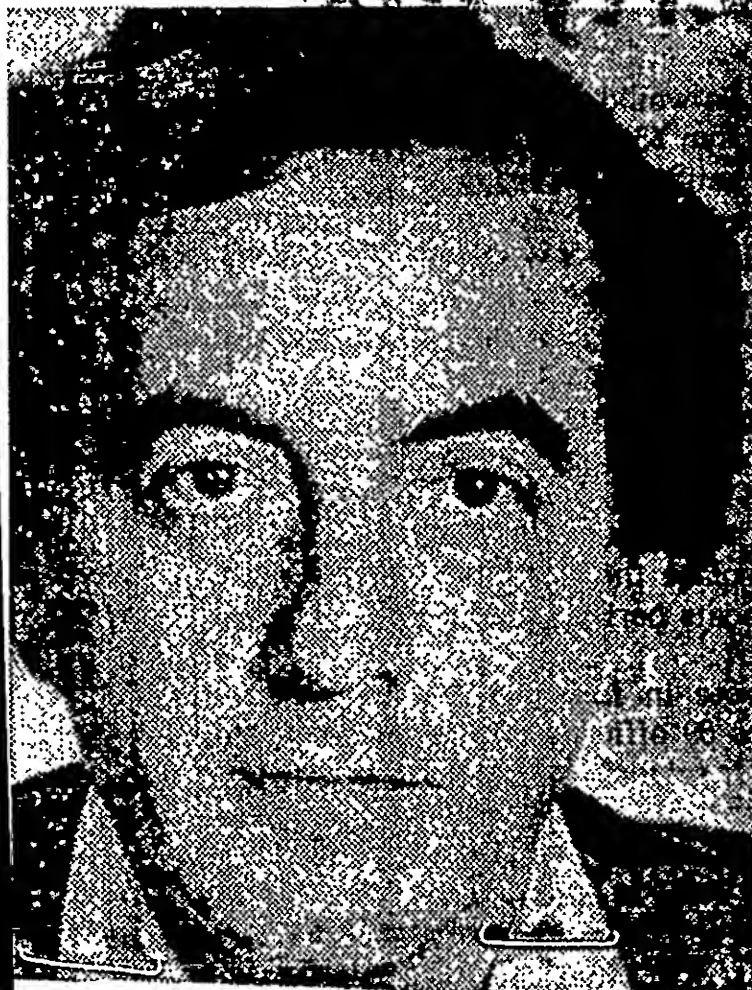
*Wherever green is worn,*

*Are changed, changed utterly:*

*A terrible beauty is born.*

"He was a very good friend," said Falzon, now 41. "But after hearing him in this room, I saw a totally different person. Now he saw himself as savior of The City."

**Tomorrow: Dan White and homophobia**



**U.S. Attorney Joseph Russo**, left, will decide whether to recommend a federal trial for White.

**Prosecutors Thomas Norman and Joseph Freitas**, right, handled the state case four years ago.

...who ... meeting ...



## Quotes from The Dan White file

### Trial Testimony

He (White) felt that he wasn't achieving the things he had hoped to, and a lot of it, though, had to do with the political process, the political system. (He) didn't want to have to vote for something he really wasn't all that in favor of, simply to get somebody to vote for something he wanted. He found himself increasingly frustrated.

Dr. Donald Lunde, psychiatrist

He (White) had expected that people would operate strictly from principle, which is the way he always saw himself operating. . . . Yes, he felt that things were not going well in San Francisco on the political horizon, and he felt that he personally had some ability to redress the kinds of wrongs which he saw happening, and as is characteristic of the personality, he went into it with extremely idealistic notions of what it was going to be all about.

Dr. Richard Delman, psychiatrist

. . . (White has) intolerance to the human personal aspects by which a lot of votes are arrived at. He would prefer to see them arrived at in a cold, scientific, objective way and, of course, as we know, most legislation is a compromise of special interests. That's not his way.

Dr. Martin Blinder, psychiatrist

I think he was disillusioned with the manner in which politicians conducted themselves. . . .

Denise Apcar, White's chief aide

### From White's confession

Well, it's just that I've been under an awful lot of pressure lately, financial pressure, because of my job situation, family pressure because of, ah . . . being able to have the time with my family.

It's just that I wanted to serve the people of San Francisco well, and I did that.

Then when the pressures got too great, I decided to leave. After I left, my family and friends offered their support and said whatever it would take to allow me to go back into office, well, they would be willing to make that effort.

So, since I felt the responsibility for the people that elected me, I went to Mayor Moscone and told him that my situation had changed because of the support of family and friends and I'd like to be, retain my seat, to be reappointed to my seat.

Initially he told me that he felt I was an elected representative of District 8; that I was doing an

outstanding job, people of District 8 were lucky to have me, and that if it came to a legal ruling that he would appoint me, reappoint me, because of the type of person I was.

So with that in mind I tried to set my personal affairs in order, preparing to take my seat. And then it came out that Supervisor Milk and some others were working against me to get my seat back on the board. . . .

I could see the games that was being played. They were going to use me as a scapegoat. Whether I was a good supervisor or not was beside the point. . . .

And I saw more and more evidence of this during the week when papers reported that, ah . . . someone else was going to be appointed.

I couldn't get through to the mayor. The mayor never called me.

And it was only on my own initiative that I went down today to speak with him. I was troubled. The pressure, my family again, my, my son's out to a babysitter . . . my wife's got to work long hours, 50 and 60 hours, never see my family.

. . . and I went in to see him and, and, he told me he wasn't going to reappoint me, and he wasn't going to — intending to — tell me about it. . . .

Didn't even have the courtesy to call me or tell me that I wasn't going to be reappointed. The, ah, I got kind of fuzzy, and just then my head didn't feel right, and I — then he said, "Let's go into the back room and, and have a drink and talk about it," and, ah . . .

. . . It was just like a roaring in my ears and then, em, it just came to me, you know, he . . .

You couldn't hear what he was saying, Dan?

Just small talk that, you know, it just wasn't registering. What I was going to do now, you know, and how this would affect my family, you know.

And, and just, just all the time knowing he's going to go out and, and lie to the press and, and tell them, you know, that I, I wasn't a good supervisor and that people didn't want me.

And then that was it.

Then I, I just shot him. That was it. It was over.

What happened after you left there, Dan?

Well, I, I left his office by one of the back doors and, and I started — I was going to go down the stairs — and then I saw Harvey Milk's aide across the hall at the supervisors' — and then it struck me about what Harvey had tried to do.

And I said, Well, I'll go talk to him. I said, You know, at least maybe he'll be honest with me, you know.

And I went in and — like I say — I, I was still upset and, ah, then I said, I wanted to talk to him and, and, and try to explain to him, you know.

I didn't agree with him on a lot of things, but I was always honest, you know, and here they were, devious.

And then he started kind of smirking because he knew, he knew that I wasn't going to be reappointed.

And, ah, it just didn't make any impression on him. I started to say, you know, how hard I worked for it and what it meant to me and my family and then my reputation as, as a hard worker, good honest

person

And he just kind of smirked at me as if to say,  
"Too bad."

And then I just got all flushed and, and hot. And I  
shot him.

I didn't even, I didn't even know if I wanted to kill  
him. I just shot him. I don't know.

*Is there anything else you'd like to add at this  
time?*

Just that I've always been honest and worked  
hard, never cheated anybody or, you know, I'm not a  
crook or anything.

And I wanted to do a good job.

And I saw this city as it's going, kind of downhill.

And I was always just a lonely vote on the board.

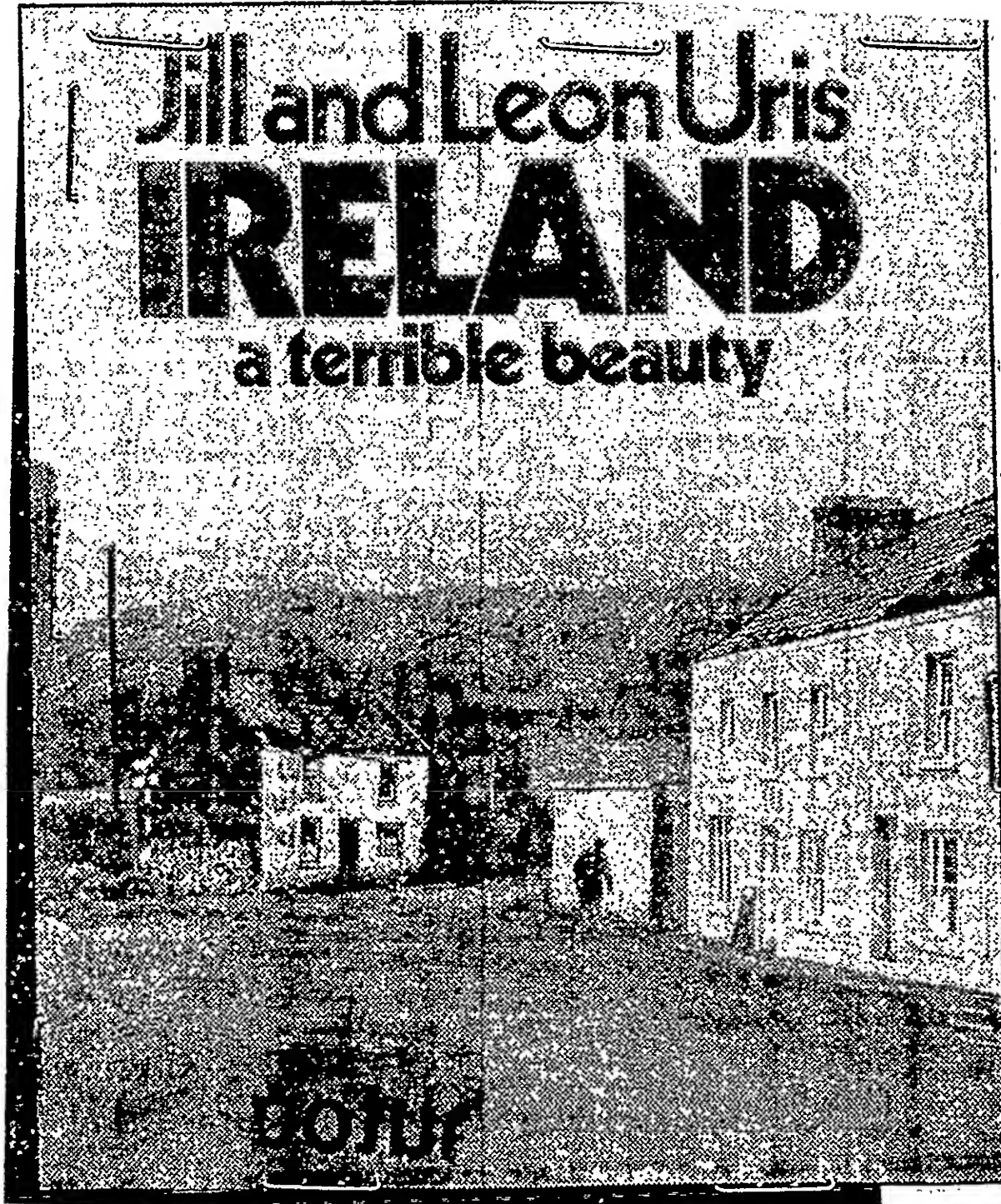
And try to be honest.

And, and I just couldn't take it anymore, and  
that's it.

# Jill and Leon Uris

## IRELAND

a terrible beauty



The book cover that  
rested in Dan White's  
back pocket when he  
killed the mayor and  
supervisor. The book  
deals with the martyr-  
dom of an Irish patriot.  
The title is from *Easter  
1916*, a poem written  
by William Butler  
Yeats. Its significance  
to White remains  
largely known.





Moments after his Nov. 27, 1978, confession, Dan White was taken to jail in S.F.'s Hall of Justice

United Press International

(Indicate page, name of newspaper, city and state.)

(Mount Clipping in Space Below)

Date: 9-6-83

Edition: Final

A5 S.F. Examiner  
San Francisco, Ca.

Title:

Character:

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Classification:

Submitting Office: SF

Indexing:



## An assassin's legacy

# Jan. 6: Start of a new nightmare?

I put my arm around him and told him everything was going to be all right. But how everything was going to be all right, I don't know.

**A**S HE OBSERVED his 37th birthday last Friday in his cell, Dan White could reflect that almost everything for him is going to be almost all right.

While in prison, the killer politician didn't lose his family, the equity in his row house in the Outer Mission or his profitable little potato business at Pier 39.

He lost about five years. He kept a low profile. No interviews. No statements of regret or remorse. He wanted therapy. And, notwithstanding trial testimony, no diagnosis of mental illness.

By Nov. 27, the fifth anniversary of the day he killed Mayor George Moscone and Supervisor Harvey Milk, White will know if he faces federal prosecution based on the politics of assassination.

It isn't the ex-state trooper, ex-police officer and ex-politician who will become an ex-convict on his way out of Soledad into an uneasy future.

Dan White can't go home again. "He definitely fears his life would be in jeopardy," said Dan Byrd, his unit supervisor at the state Correctional Training Facility in Soledad.

Nor is White likely to emigrate soon to his beloved Ireland, a plan he discussed with friends and relatives. Anonymity on that gossip list would be impossible except in Dublin, but there White would find an emerging but militant gay-freedom movement.

When he filed his tentative parole plan recently, White didn't specify a location or a job. The plan hasn't been accepted yet but White's parole can be held up only if he violates prison rules.

Byrd said, "He doesn't want any kind of altercation with anybody. He's trying to protect his (parole) date."

White is considered aloof by his

neighbors in Protective Housing Unit No. 1, an enclave for inmates who need to be safeguarded from the 4,000 mainline prisoners. His 131 associates include other ex-politicians, snitches, child molesters and celebrities like assassin Sirhan Sirhan, mass murderer Juan Corona and Chowchilla kidnapper Fred Woods.

Mr. White is making a satisfactory adjustment," said Byrd. "He spends most of his days in his cell, reading. He reads extensively."

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| SEP 22 1983                                    |                                             |
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He said White exercises by playing basketball.

White's visitors rarely include anyone outside the family. For a time he held a prison job as a laundry porter, which allowed him the privilege of conjugal visits every few weeks. But following the birth of his second child, afflicted with Down's Syndrome, he quit the job.

"It became too much of a hassle, dealing with the characters in this wing," he wrote to a family nurse.

he had met while in the county jail here. "I could not eat meals or walk in the yard without being harassed."

The next time he was in the county jail, he was in a room with a man who was a convicted murderer.

"I am relieved not to have to suffer their inopportunities anymore."

When he leaves prison, White won't go on welfare.

His attorney and family didn't respond to requests for information about the mortgage. Hal and his wife are still listed as owners of the six-room home they bought for \$70,000 in 1977. The original mortgage was \$55,000 and the loan is now \$100,000.

At the trial, Mary Ann White filed a homestead declaration to keep at bay any judgment from the civil suit, filed by the victim's family.

Payments would amount to \$100 per month, maybe more. The house is in a quiet neighborhood where similar homes sell for \$10,000 to \$20,000, which would appear to give White an equity of at least \$40,000.

To make the payments and meet other expenses for her two children,

Mary Ann White must continue as an elementary school teacher. A spokesman for the San Francisco Unified School District said that in this fall, on a full-time basis, she would earn \$10,000 to \$12,000 for the year, he said.

Friends and former associates at the police and fire departments raised what one source called a "fairly impressive sum" in a 1978 fund drive for Dan White's family.

Through his wife and a brother, White also retains ownership of Potato Place Inc., the corporation that owns a spud stand at Pier 39. Fritz Arko, manager of the tourist complex, said the Potato Place is sur-

prisingly profitable. He said Mary Ann White had informed him she had decided to get out of the potato business.

White qualifies for Irish citizenship, according to consul-general Thelma Doran, if he can prove that at least one grandparent was born in Ireland. (Two of his grandparents came from the old country, according to friends.) She said that he would not be barred because of his manslaughter convictions.

White visited Ireland as a tourist, then as a honeymooner. Friends said he considered farming amid the bogs and rocky hills of scenic County Mayo on Ireland's western shore.

Niall O'Dowd, who edits the Irishman, said White's plans were reported in Irish newspapers.

"It's become a cause celebre," he said.

Subscribers to the Irishman, a monthly newspaper published in San Francisco, include White himself.

In County Mayo, according to O'Dowd, "There is no way he could live anonymously. Everybody knows everybody else."

In Dublin, a city of half a million, big enough for facelessness, Professor David Norris of Trinity College said by phone. "Most Irish people would say we have quite enough gunmen."

Norris, a literary scholar known best as an interpreter of the works of James Joyce, is one of the founders of Ireland's gay-rights movement. He said Irish gays know about White.

"We are hospitable here," said Norris. "But he won't be welcome."

At Soledad, Byrd said, "I think the Irish plan has been thrown out as a feasible option."

Because an out-of-state parole is permissible under certain circumstances, acquaintances predict White may try to settle in Alaska.

He has expressed admiration for the pioneer spirit of the Alaskans, an impression he received after he hitchhiked up the old Alcan Highway more than 10 years ago and spent part of a winter in Anchorage.

This would be fine with Mayor Feinstein, who has begged Gov. Gearty to bar White forever from his hometown.

The governor can't. White will be under the supervision of his parole officer for just one year if the state can prove a good reason to extend the term. The reasons include violation of parole terms—but they don't include public opinion. After that, White is on his own.

—Lynn Ludlow



# Where are they now?

Key players in the assassination saga, five years ago and today



**Charles Gain**

**Then:** An outsider with progressive views and an aloof manner, he remained police chief under Feinstein because the new mayor wanted to thwart "the assassin's will."

**Now:** After the manslaughter verdicts, roused off riots at City Hall and assaults later by frustrated police in gay taverns, he left police work to operate a trailer park in the Central Valley.



**Joseph Freitas**

**Then:** He was in his first term as district attorney, a rising star in politics when he named his top homicide prosecutor to the White case.

**Now:** In November 1979 he was defeated easily by Arlo Smith, who says today that the White case was high on the list of reasons. Freitas is in private practice in The City.



**Martin Blinder**

**Then:** As a forensic psychiatrist he had testified in hundreds of criminal cases. In the White case while discussing the defendant's bouts of depression, he mentioned Twinkies.

**Now:** He is appalled at what appears to be adverse public reaction to psychiatric explanations for criminal behavior — but he said psychiatrists still testify as to state of mind.



**Mary Ann White**

**Then:** A schoolteacher recently married, she held her son and told a TV interviewer she received hundreds of letters of sympathy. She hoped "we will be together as a family."

**Now:** Like others close to Dan White, she stopped giving interviews. Continuing to teach, she manages the family potato stand and prepares to join her husband on his parole.



**Scott Smith**

**Then:** As Harvey Milk's longtime lover, he operated Castro Camera while his partner worked full-time in politics. He was executor of the estate.

**Now:** The camera store folded because of high rents. Although White's homeowners' insurance settled with Gina Moscone, Allstate is fighting Smith's claim. He is director of the Harvey Milk Foundation.





**Tom Norman**

**Then:** As a top homicide prosecutor, he followed standard procedures and found himself with a law-and-order jury that sympathized with Dan White.

**Now:** Still assigned to major cases, he remains in a semipermanent state of shock at the White jury's verdicts. He says, "I still can't believe it."



**Gina Moscone**

**Then:** As wife of a hyperactive politician and mother of his four growing children, she followed a schedule that left little time for herself.

**Now:** Occasionally emerging to support causes that honor her late husband, she prefers to live quietly in San Francisco as her children continue their studies.



**Doug Schmidt**

**Then:** An ambitious young defense lawyer, he arranged a parade of psychiatrists to raise doubts about his client's capacity to premeditate or form malice. He hoped White would get therapy in prison.

**Now:** After the trial he told fellow lawyers how to manipulate the media. Today he has become a media recluse. He doesn't answer messages, even to say "no comment."



**Frank Falzon**

**Then:** An inspector in the homicide detail, he relied on longtime friendship to persuade White to change his mind and admit the killings.

**Now:** Like the prosecutor, he remains astounded at the verdicts and deeply hurt when people contend that he went easy on White because of past friendship.



**Dianne Feinstein**

**Then:** She was president of the Board of Supervisors and a friend of Dan White's when she heard the shots and found Harvey Milk's body.

**Now:** Named mayor by the supervisors and later elected, she fought off a recall and expects reelection this November. She wants White forever barred from his hometown.

## FEDERAL BUREAU OF INVESTIGATION

1

Date of transcription 9/8/83

Mr. John P. Elia voluntarily appeared at the San Francisco Office of the Federal Bureau of Investigation. Mr. Elia was advised this investigation is at the request of the United States Department of Justice.

He furnished the following signed statement which was dictated by Mr. Elia to Special Agent (SA) [REDACTED]:

"September 6, 1983

"San Francisco, California

"I, John P. Elia, furnish the following voluntary statement to Special Agent [REDACTED] and [REDACTED] who have identified themselves to me as Special Agents of the Federal Bureau of Investigation. No threats, promises or duress have been made to get me to make this statement. I have been advised that it may be used in a court of law concerning a possible Civil Rights violation.

"Before March, 1978, maybe in February, 1978, I read in the papers a comment made by Dan White and I was impressed. At this time I was interested in a recall of Mayor Moscone and Harvey Milk. Therefore, I wrote to Dan White and praised him for his comment and that he appeared to be an out-and-out law and order man.

"Dan White wrote back to me and stated, 'Whenever you are in City Hall, I will be glad to talk to you.'

"I know longer have this letter because I was disgusted at the small little room he spoke to me in; he did not have the courtesy to interview me in his office and talked like a crazy man. I walked out and had no interest in keeping the letter.

"In March, 1978, about ten o'clock one morning, I went to see Dan White at Room 225, City Hall, San Francisco, which is the supervisor's Clerk's Office. A young man named [REDACTED] was in the office. Dan White came out and said, 'Mr. Elia?' The boy named [REDACTED] stood up and followed Supervisor White. In a few seconds White came back, almost chasing the boy out; White was very angry and stated, 'That damn fag'.

Investigation on 9/6/83 at San Francisco, California File # SF 44C-2178 -10  
by SA [REDACTED] AND MWM/rmw Date dictated 9/8/83

b6  
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"I told Mr. White about the manager of Dahl (ph) Shoe Store; he is interested, as I am, in recalling Supervisor Milk and Mayor Moscone out of office.

"Mr. White said, 'Gee, Johnnie, the recall cannot be done, but I promise by the end of the year, one way or another, I am going to get rid of three bastards --- [redacted] Milk, and Moscone.'

"I said to White that I know you don't like Jews, but why an Italian? Milk said it was because Moscone is leaning towards gays.

b6  
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"I was so disgusted by the conversation I got up and left.

"I met [redacted] about a month later and she said I should meet her father before I say anything bad about him.

"During the summer of 1978, Mayor Moscone was at the Curran Theater, Geary Street, San Francisco, representing San Francisco at the opening of the show, 'Hello Dolly'. When I had a chance to say something to the Mayor, I found him to be a real gentleman, with a smile always on his face. I also asked about his daughter's health because I had discovered she had a very serious sickness. George introduced me to [redacted] the singer of 'Hello Dolly'.

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"Soon after this first meeting I met the Mayor at the steps of City Hall. He was being photographed. I asked him to pose with me so I could send the picture to my family and [redacted] of Jersey City, who is a friend of mine. We all got to be friends during these two visits.

"During the weekend of November 24-25, I learned from different sources of people on Polk Street, Grove Street, Van Ness Avenue (I travel alot) I heard that Dan White had gone mad. I could not sleep that Sunday night, November 26.

"I hang out at the Supreme Court Building, 350 McAllister, Room 4050, the Bailiff's Office. I told Bailiffs [redacted] (ph) that I have a feeling some-  
[redacted] things going to happen to Moscone. They said what are you, psycho.

b6  
b7C

"I got up from the chair and went and looked out the windows. I could see City Hall and that the Mayor's car was parked out front. I went over to a policeman named [redacted] who is the cop on beat at City Hall. I told [redacted] plus three other police officers, that he should watch for Dan White and search him very carefully. All laughed at my statement, saying, 'Dan was a good cop and he's not going to hurt anyone'.

"I walked up to Room 200, City Hall, the outer office of the Mayor's office. There were lots of people there with straw hats that said, 'Dan White for Supervisor'. I thought there were enough people there that the Mayor was safe, so I left.

"I went to the bus stop, heard sirens and saw police cars and fire trucks (the [redacted] is a good friend) and I ran back to City Hall.

b6  
b7C

"A guard told me of the shooting. Then [redacted] held a press conference. I hollered, 'What kind of security do we got here?'

"The next day, I saw Robert (Bob) McCarthy, Assistant District Attorney for San Francisco, and told him everything. He had an investigator interview me. I do not recall signing a statement. I was not asked to testify during White's murder trial. Bob and I have been friends for years and I met him on November 28, 1983, at City Hall."

[redacted] SA-FBI-SF, 9/6/83  
[redacted] SA-FBI-SF, 9/6/83

"I have read the above statement consisting of this and four other pages. I understand the statement entirely and have signed it after initialing it on each page because it is true and correct to the best of my knowledge."

Mr. Elia is described through observation and interview as follows:

|           |                                                                                                  |
|-----------|--------------------------------------------------------------------------------------------------|
| Name      | John Patrick Elia                                                                                |
| DOB       | 3/13/15                                                                                          |
| POB       | Manhattan                                                                                        |
| SSAN      | 054-03-5735                                                                                      |
| Height    | 5'5"                                                                                             |
| Weight    | 190                                                                                              |
| Hair      | Bald - grey (shaved head)                                                                        |
| Eyes      | Brown                                                                                            |
| CDL       | ID card N2370671                                                                                 |
| Education | Seventh Grade                                                                                    |
| Military  | Army 1941-1941<br>2/21/41 - Inducted<br>11/17/41 - Discharged for Encephalitis<br>(brain damage) |
| Marital   | Separated                                                                                        |



|               |                                                                                                                                                                                                                                            |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Address       | Current -<br>Sutter Manor<br>860 Sutter Street<br>Room 616<br>San Francisco, CA<br>Telephone 772-1522                                                                                                                                      |
|               | Mailing -<br>P.O. Box 904<br>San Bernardino, CA 92402                                                                                                                                                                                      |
| Employment    | Retired - worked for various attorneys<br>as a bodyguard, plus many other occupations                                                                                                                                                      |
| Miscellaneous | No treatment for drugs or alcohol.<br>Mental illness treatment - after Army<br>released on a Section 8 - Kings Park<br>State Hospital, 1942 for thirty days;<br>committed by mother.                                                       |
| Arrest        | No time served except in 1933 in<br>Brooklyn - stole Model T-Ford; Last<br>arrest in 1979 by San Francisco Police<br>Department - (gave out sleeping pills)<br>"Selling Narcotics". Judge Brown is a<br>personal friend, therefore "OR'd". |

Half way through the signed statement, Mr. Elia asked to speak off the record. SA [ ] stated this was not acceptable.

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Mr. Elia made available a copy of a newspaper article from the "San Diego Evening Tribune", dated April 30, 1976. A copy is attached and considered a part of this FD-302, consisting of one page.

Mr. Elia further made numerous statements that he was a personal friend of [ ] of Jersey City, etc.

He also stated he is good friends with the father and uncle of USA Joseph Russoniello. However, he does not like USA Russoniello at all.

Interviewing agents do not believe Mr. Elia would be a good witness in this matter.



## Rent subsidies to extend to hotel rooms

By ROBIN MAYDECK  
TRIBUNE Building and Real Estate Editor

John P. Elia, 61, made housing history this week.

So did the city's often-troubled leased housing program, the Department of Housing and Urban Development's controversial Section 8 rent subsidy program and Bill Bellville, owner-general manager of the venerable Hotel San Diego.

The history was made when HUD approved the leased housing program proposal to allow Elia to qualify for Section 8 rental subsidization as a permanent resident of Bellville's hotel.

According to Doria Henderson, the city's housing officer, this is the first time HUD has allowed that hotel accommodations can be qualified as suitable leased housing for senior citizens under provisions of Section 8.

As soon as federal approval was received this week, Henderson arranged with Bellville to set aside approximately 40 rooms in the historic hotel for rental by Section 8 recipients.

The action is significant for several reasons — not the least of which is that the city will be able to use less of its \$1.3 million Section 8 allotment for more subsidized rentals than anticipated, Henderson said.

It is also significant because it is the first instance in the highly criticized two-year history of the Section 8 program that a way has been found to use subsidy funds with virtually no delay time.

Elia, formerly of Jersey City, N.J., is not only the first person in the nation to take advantage of the new permitted use of Section 8 funds, he is directly responsible for the HUD decision.

Several weeks ago the former bodyguard and chauffeur applied for Section 8 rental assistance.

Under provisions of the National Housing Act of 1974, persons qualified for Section 8 rental assistance will, under certain conditions, pay no more than 25 per cent of their adjusted annual income toward rental of qualified shelter units.

The federal government subsidizes the remainder of the recipient's rent up to a designated "fair market value" set by HUD.

(Cont. from page C-1, col. 1)

Elia was deemed eligible for Section 8 rental assistance and was told to find suitable rental quarters within the parameters of the "fair market value" set by HUD for the San Diego area.

He asked why the room he was renting in the Hotel San Diego could not be the room subsidized under the Section 8 program.

"I got a beautiful room here, and I didn't see why I should move somewhere else, at the program's expense, and end up with a rent that cost the government more money than they would pay if I stayed at the hotel," Elia told the Evening Tribune.

Henderson agreed that Elia's reasoning made sense and requested a decision from HUD.

"HUD did just about everything it could to decide against the leased housing program's request, and in the end gave us the go-ahead," Henderson said.

Bellville, too, took an immediate liking to the idea.

"I don't think the owner of the average transient hotel would want to participate in the program, but I want a combination of transient and permanent residents because it gives me more stability," the hotel owner said.

"This way, I can count on a stable occupancy month-to-month in the rooms we've blocked off for the city."

Indeed, all parties concerned with the hotel rent subsidy seem to be quite happy with the innovation.

Bellville is pleased because he will have a stable occupancy and rental security.

Elia is pleased because he can stay in a location at which he is comfortable and know that he is helping save tax dollars.

Henderson is pleased not only because of the economy of the decision, but also because use of downtown hotel rooms for senior citizens receiving rental subsidies will allow these persons to stay in an area where services and conveniences are at hand.

The Section 8 program has only recently become operative in San Diego and the rest of the nation — and its degree of operativeness is subject to debate.

This omnibus section of the 1974 housing act has been under constant criticism from legislators, builders, spokesmen for public housing authorities

and citizen organizations since becoming law.

In essence, Section 8 was designed as a multipurpose federal program to replace several independent programs put on ice by the Nixon Administration's 1973 moratorium on housing subsidy projects.

While the philosophy of the section — to shift emphasis away from low-cost housing projects subject to deterioration into "instant slums" to direct rental payment subsidization for new or existing rental units — has not been argued, the effectiveness of Section 8 has been bitterly debated.

HUD spent nearly a year drawing up rules and regulations for the operation of the program only to be told by officers across the nation that the rules and regulations were unworkable.

Section 8 went back to the drawing boards for operational revisions last year.

For all purposes, it is only in the last few months that the rental subsidy program has been ready for testing, and the results, to date, have not been encouraging.

The rental subsidy portion of Section 8 has been criticized for being nothing more than a "hunting license."

Lower-income persons and senior citizens qualified for the rental assistance are given an eligibility letter and a limited period of time to find a "decent, safe and sanitary" rental unit that is priced within the HUD-designated "fair market value" of their community.

According to critics of the program, HUD's "fair market values" have been unrealistically low — especially for urban areas, such as San Diego, where the demand for rental units is high and a near-zero vacancy factor exists.

Although "fair market values" have been revised upward by HUD within the last year, even HUD Secretary Carla Hills has conceded that in many areas recipients of Section 8 subsidies will be hard-pressed to find landlords desperate enough to rent decent housing at HUD's designated levels.

This, however, will not be the case in the local hotel subsidy program.

"The city people told me that the 'fair market value' Elia's room would bring in would be about \$171," Bellville said, "and asked me what would I be comfortable with. I told them, \$100 a month would do just fine."

Federal tax monies will

make up the difference between 25 per cent of Elia's adjusted annual income and the \$160 a month.

Henderson says the city-administered program will enjoy a substantial savings over what the Section 8 subsidy would otherwise be if Elia could have found a traditional apartment unit.

A congregate dining program under the housing authority also makes provisions to make three meals a day available to Section 8 hotel occupants.

Because of the savings in lodging costs and the congregate meal program, senior citizens eligible for the program should be able to use portions of their personal income for things other than food and shelter, Henderson said.

(Mount Clipping in Space Below)

# Duke urges U.S. to prosecute White

By Gale Cook and John Jacobs

Examiner staff writers

Gov. Deukmejian has written U.S. Attorney General William French Smith, urging that Dan White be prosecuted under federal civil rights law for the 1978 killings of Mayor George Moscone and Supervisor Harvey Milk.

In a letter dated Friday, Deukmejian cited the Civil Rights Act of 1968, under which a person can be charged if he "willfully injures" a person and thus interferes with that person's candidacy for political office. If death results, Deukmejian noted, the sentence can be life imprisonment.

In the letter, a copy of which was obtained by The Examiner, Deukmejian also revealed that he has talked about the White case with Associate Attorney General D. Lowell Jensen, the former Alameda County district attorney who now serves as the No. 3 official of the U.S. Justice Department.

Reached at his home in Arlington, Va., yesterday, Jensen said, "I know what he (Deukmejian) wants. He wants us to prosecute. It's under consideration. I can't comment beyond that."

The governor is the highest-ranking official yet to call for federal prosecution of the former San Francisco supervisor, who admitted to fatally shooting Moscone and Milk after he learned he would not be reappointed to a supervisory seat he had resigned.

Under the federal law, only the attorney general or his chief deputy can decide whether to prosecute. The decision is based on whether the facts fit the law and whether the prosecution "is in the public interest" and "necessary to achieve substantial justice."

Justice Department officials must decide

by Nov. 27, the fifth anniversary of the killings, when the statute of limitations expires.

Joseph Russoniello, the U.S. attorney for the San Francisco region, said he "appreciated" Deukmejian's letter, though he has not expressed an opinion on whether to prosecute the politically sensitive case.

His office would try the case after first seeking a grand jury indictment, should the Justice Department decide to go forward.

Last June, San Francisco District Attorney Arlo Smith also urged the Justice Department to prosecute. John Eshleman, Wahl lawyer to the estate of Harvey Milk, first suggested the prosecution last spring.

A San Francisco Superior Court jury convicted White, 37, of voluntary manslaughter for the Nov. 27, 1978, assassinations. He received a prison sentence of seven years, eight months. With time off for good conduct, he is expected to be paroled from Soledad Prison in early January.

The May 1979 verdict created an uproar in

San Francisco. On the evening of the verdict, an angry crowd mostly made up of gay demonstrators rioted outside City Hall, attacking the building and burning police cars.

Mayor Feinstein said last spring that she would petition the state parole board to keep White out of the San Francisco area once he was released from prison.

"I would think this letter would have a definite impact on the federal decision," said District Attorney Smith, "in the sense they (the Justice Department) will not feel this is a routine local matter."

"With this letter, we can be assured that this matter will get a careful

(Indicate page, name of newspaper, city and state.)

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Edition: 4 Star  
S.F. Sunday Examiner  
Pg. A1  
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44C-2178

# Feinstein Asks U.S. To Prosecute White

By Reginald Smith

Expressing San Francisco's "outraged sense of justice" over Dan White's manslaughter verdicts, Mayor Dianne Feinstein made a personal plea to U.S. Attorney General William French Smith for federal prosecution to keep the former supervisor behind bars.

"Dan White's crime remains an open wound in this city," Feinstein wrote in a letter to Smith that was made public yesterday.

"I sincerely believe Dan White's sentence damaged the credibility of our entire criminal justice system. He is perceived not only as getting away with murder, but as a public official whose special status somehow enabled him to get away with murder."

White was convicted of voluntary manslaughter in the 1978 killings of Mayor George Moscone and Supervisor Harvey Milk. He is scheduled to be released from state prison in January.

Smith is considering prosecuting White under a federal civil rights law that could allow White to be charged with interfering with the political duties of Moscone and Milk.

Earlier this month, Governor

*Back Page Col. 4*

(Indicate page, name of newspaper, city and state.)

*S.F. Chronicle*

Date:

*9/27/83*

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*Home*

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*Feinstein asks U.S. to Prosecute White*

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Classification: *CR*

Submitting Office: *44*

*SF*

## FEINSTEIN URGES WHITE'S PROSECUTION

From Page 1

Deukmejian wrote to Smith and urged him to pursue the federal prosecution. Feinstein added her support in the letter released yesterday, which was dated last Friday.

Feinstein said in her letter that White had abruptly resigned as supervisor but wanted his seat back. She said he killed Moscone to pre-

vent the mayor from replacing him.

"It is clear to me that Dan White perpetrated these tragic killings to prevent the swearing-in of the man destined to replace him on the Board of Supervisors and therefore, to prevent Mayor Moscone from carrying out his official act of appointment," Feinstein wrote.

In July, Feinstein signed a resolution passed unanimously by the board requesting the Justice De-

partment to try White on the federal civil rights charges.

She then wrote an angry letter to Joseph Russoniello, the U.S. attorney in San Francisco, calling White's actions "an act of terrorism."

Although her words to Smith were somewhat more restrained, an aide said the mayor wanted to underscore her position by writing to the attorney general.



The Honorable William French Smith  
Attorney General  
U. S. Department of Justice  
10th and Constitution Avenue  
Washington, D.C. 20530

Dear Bill:

In 1978 Dan White, then an elected county supervisor of San Francisco, shot and killed George Moscone, Mayor of the City and Harvey Milk, a fellow county supervisor. Mr. White was subsequently convicted in State court of manslaughter and was sentenced to six years imprisonment, the maximum term prescribed by law for that offense. He is presently scheduled to be released from state prison in January. Mr. White's actions clearly violated state law and may have constituted a violation of federal criminal statutes as well.

This letter is to confirm my earlier telephone request to Lowell Jensen that you review the factual circumstances surrounding the deaths of Mayor Moscone and Supervisor Milk and if appropriate commence a criminal prosecution against Mr. White under Title 18, United States Code section 245.

Under section 245, an individual who willfully injures a person for the purpose of interfering with that person's candidacy for political office is guilty of a federal offense punishable by imprisonment for life if death results from the injury. It is my understanding that both Mayor Moscone and Supervisor Milk were prospective candidates for re-election at the time of their deaths. Mr. White's actions naturally interfered with their ability to qualify and campaign as candidates for re-election. It is also my understanding that the penal sanctions imposed by section 235 apply to elected officials as well as candidates. (see United States v. Carvin (CA Fla 1977) 555 F2D 1303). Thus, regardless of their status as candidates, Mr. White's homicidal acts constituted injury to Messrs. Moscone and Milk as elected officials and are punishable as such.

TEAR  
SAVE 50-67%!  
33-40%!  
E 330%!

review at a higher level."

In the carefully worded "Dear Bill" letter, Deukmejian asked that the Justice Department review the factual circumstances surrounding the killings and, "if appropriate, commence a criminal prosecution against Mr. White."

"It is my understanding," Deukmejian wrote Smith, "that both Mayor Moscone and Supervisor Milk were prospective candidates for re-election at the time of their deaths. Mr. White's actions naturally interfered with their ability to qualify and campaign as candidates for re-election."

"It is also my understanding that the penal sanctions... apply to elected officials as well as candidates.... Thus, regardless of their status as candidates, Mr. White's homicidal acts constituted injury to Messrs. Moscone and Milk as elected officials and are punishable as such."

The governor was a friend of George Moscone, the Democratic majority leader in the state Senate before his election as mayor of San Francisco in December 1975.

During a state Senate tribute to Moscone shortly after his death, Deukmejian, then about to leave the Legislature to become state attorney general, nearly broke down with emotion, standing in silence for almost a minute before he could continue with his speech.

"In making this request," his letter to Smith said, "I am mindful of the fact that Mr. White has already been tried in state court. However, there is no legal impediment to a federal prosecution based on the same facts."

"The federal government, as a separate sovereign, has as much of an interest in insuring that its laws are adequately enforced as the State of California has in enforcing state law...."

"There is no doubt that had a federal prosecution been first commenced and resulted in a nominal prison sentence, the San Francisco district attorney would have still been able to proceed with state charges. The same principle applies to the commencement of a federal prosecution which follows a successful state prosecution."

Lawyer Wahl said he thought the governor's letter "shows there is a substantial bi-partisan interest in keeping the justice system working."

"We can't allow government to be

changed by violence, which was the motive of Mr. White in killing Mayor Moscone and Supervisor Milk," Wahl said.

"I'm personally very pleased the governor has seen fit to add his weight to the public drive to see that

a miscarriage of justice is corrected."

Thomas Horn, attorney for Gina Moscone, the late mayor's widow, said of the letter, "Well, good for the governor. I hope it works."

Mrs. Moscone would have no comment, he said.

Milk's former lover and executor of his estate, Scott Smith, said it was a "good sign to have the governor of the state, who belongs to the same political party as the president," urging prosecution.

And Supervisor Carol Ruth Silver, who urged that White's January parole date be revoked, said she was delighted by the news.

"Dan White might only serve another year or two or three after his state prison term," Silver said. "However, the benefit to the community in having recognition of the incredible impropriety of his act would be enormous."

"If White were convicted under the federal law and given the maximum sentence, he could be eligible for parole after 14 years. Conceivably, a judge could reduce his sentence, given the time he has already served."



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(Indicate page, name of newspaper, city and state.)

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San Francisco, Ca.

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# Dan White's case is in hands of U.S.

By Larry D. Hatfield  
Examiner staff writer

U.S. Attorney Joseph Russoniello says he won't make a recommendation on whether the Justice Department should prosecute Dan White for the slayings of Mayor George Moscone and Supervisor Harvey Milk.

The decision whether to prosecute White under the Civil Rights Act of 1968, a touchy legal and political problem for the Reagan administration, also apparently is still several weeks away, it was learned today.

"The status of the situation is that we're studying the legal aspects of it right now," said Justice Department

spokesman John Russell in Washington, D.C.

Asked whether Russoniello had made a recommendation on whether to prosecute White, Russell would say only that the local prosecutor and his superiors in Washington have been discussing the case.

"Yes, there's been correspondence between Russoniello and the general litigation section on this matter, but we're not prepared to discuss it beyond that."

Russoniello told The Examiner: "I've been in contact with the Department of Justice since June 1 (on the White matter), but I did not make any recommendation ... I was not asked

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44P-2178



**U.S. ATTORNEY RUSSONIELLO**  
It's Washington's decision

to and I didn't."

He said his conversations with Justice officials were on matters of law, and not the basic question of whether White, who was convicted in 1979 of voluntary manslaughter for the Nov. 27, 1978, pistol slayings of Moscone and Milk, should face federal charges after he is released from state prison early next year. His parole date is Jan. 6.

The decision is now entirely in Washington's hands, Russoniello said. "They have the matter under consideration."

He said he had hoped for a decision before he leaves Monday on a vacation trip to Europe. "But I don't think so... I also don't think it's going to happen before I get back (on Oct. 18)."

Russell, when asked when the decision would be made, said only "in the next several weeks."

A decision has to be made by the fifth anniversary of the killings because of a five-year statute of limitations imposed by the civil-rights act.

The law says prosecution of White, who had just resigned from his own supervisor's post and was seeking reappointment by Moscone when he shot the mayor and Milk, can be

ordered only by U.S. Attorney General William French Smith or his chief deputy, Edward Schmults.

Among other things, the civil-rights law makes it illegal to injure, intimidate or interfere with anyone qualifying as a candidate for elective office (which Milk and Moscone presumably would do by filing for reelection) or from "participating in or enjoying the benefits of any program or activity receiving federal financial assistance" (which both men were doing as city officials).

If death results from such intimidation, the law provides a penalty up to life imprisonment.

If indicted and convicted for infringing on Moscone's and Milk's civil rights, White could face two life terms in prison. In effect, he could be eligible for parole in 14 years.

White, now 37, was originally sentenced to seven years and eight months after being convicted by a San Francisco jury. Now at Soledad Prison, if he is paroled as scheduled, he will have served five years, one month and eight days.

The possibility of federal prosecution was first raised last April when John Eshleman Wahl, attorney for Milk's estate, President Reagan

suggesting it. The White House passed the suggestion to Smith who passed it on to D. Lowell Jensen, head of Justice's criminal division and a former Alameda County district attorney.

A Jensen aide, Lawrence Lippe, chief of the criminal division's general litigation and legal advice section, wrote Wahl over Jensen's name and said a decision would be made after a recommendation came from Russoniello.

"The United States attorney is charged with the primary responsibility for rendering prosecutive decisions in federal criminal cases occurring in his district and has been requested to furnish his views directly to this office," Lippe said.

Russoniello, however, contended that he hadn't been asked for such a recommendation and declined to discuss it further.

Justice Department officials called the legal issues involved in the decision whether to try White for federal crimes "complex and difficult," explaining that any decision must include whether prosecution would be "in the public interest and necessary to secure substantial justice."

SF 44C-2178

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Attached to and considered a part of this insert are  
copies of recent newspaper articles concerning Dan White,  
consisting of six pages:

44C-2178-11



(Indicate page, name of newspaper, city and state.)

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## Dan White affair

In the Dan White affair, pressure is mounting to make the punishment fit the crime — but without punishing the man twice for the same crime. If we are honest with ourselves, that won't be easy.

The plan is to have federal marshals waiting at the prison gate when White is paroled in January. They will re-arrest him, not for something else he has done but for the same offense. He will be tried anew for killing George Moscone and Harvey Milk, on the charge that he violated their civil rights when he shot them.

Does that constitute double jeopardy? Many people, including Gov. Deukmejian, are willing to convince themselves it doesn't. Deukmejian has asked Washington to prosecute White under a federal law that makes it a civil rights offense to injure or kill someone "for the purpose" of interfering with that person's candidacy for political office.

"For the purpose" — that's the rub. Was that Dan White's purpose?

Said Deukmejian: "It is my understanding that both Mayor Moscone and Supervisor Milk were prospective candidates for re-election at the time of their deaths. Mr. White's actions naturally interfered with their ability to qualify and campaign...."

The bullets that White fired into their heads interfered with a lot of things they expected to do. They didn't enjoy evening sunset. They missed a good dinner. They failed to reach a ripe old age. But those were consequences of the killings. If we are honest with ourselves, we must distinguish between consequences and purpose.

Moscone and Milk were killed in November 1978. The next election in which they have run was a full

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year away. No formal campaigning had started. Whatever were the thoughts in White's churning mind, there is nothing to suggest that he shot the two men to prevent their re-election.

He shot them because he thought they'd done him wrong. And they had — although what they did to him certainly didn't justify what he did to them.

They seized upon his impetuous resignation as a chance to get rid of a conservative, even though Moscone had promised to let him withdraw it. They were playing politics. White, a neophyte, took the game seriously. In his fevered view, when he walked into their offices and shot them he was expressing righteous indignation.

When a jury ruled that he was guilty only of manslaughter, many people just couldn't accept it. Thus the campaign to re-try him on some other charge.

But the strategem that the governor has endorsed is double jeopardy in spirit, no matter how lawyers weasle-word it. White was tried for the most serious

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**The strategem that the  
governor has endorsed is  
double-jeopardy in spirit**

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charge that could be brought against him — murder. The jury returned a lesser verdict, and that is hard to swallow. But if we try him twice and punish him twice for the same crime, simply giving it another name, we set a dangerous precedent.

It wouldn't take much stretch of the imagination to turn every killing into a civil rights offense, since the victim is permanently deprived of the right to vote.

As for White himself, after he serves his second term, what's to stop us from prosecuting him a third time, for disturbing the peace with those loud gunshots, and a fourth time, for littering City Hall with the shell casings?

Before we carry this affair any further, let's pause to ask ourselves whether vengeance against Dan White is worth violating the constitutional protection against double jeopardy.

(Indicate page, name of newspaper, city and state.)

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**THE TRIBUNE**An independent newspaper  
serving the Greater  
Bay Area from Oakland  
since 1874Robert C. Maynard  
Editor and PublisherFred O. Wetton  
General ManagerRoy Grimm  
Managing EditorMark Paul  
Editorial Page Editor

Tuesday, September 20, 1983

Oakland, California

**A second trial for Dan White?**

Nearly five years have passed since Dan White slipped into City Hall in San Francisco to gun down Mayor George Moscone and Supervisor Harvey Milk, but the bitterness lingers.

To put it bluntly, many San Franciscans think White got away with murder. Tried for homicide, White convinced a jury in May 1979 that he was a victim of "diminished capacity" at the time of the killings, and thus was convicted of voluntary manslaughter instead of murder. He received a prison sentence of seven years, eight months, which has been shortened for good conduct. In all likelihood, White will be released in January.

Plainly, justice was only partially achieved in the case of Dan White. Nevertheless, we are troubled by the recommendations, first from the lawyer for Harvey Milk's estate, and now by Gov. Deukmejian, that White be tried under federal law for having deprived Moscone and Milk of their civil rights. Attorney General William French Smith, currently weighing those recommendations, must decide by Nov. 27 whether to prosecute White again.

Under federal law, the attorney general can choose to prosecute individuals who willfully injure political candidates or office holders for the purpose of depriving them of their civil rights. Such prosecutions, which can be instituted without regard for previous state criminal actions, were authorized by Congress to give federal protection against the violent repression of political activity by Southern blacks and their allies, repression in which local officials frequently cooperated.

The civil rights law thus applies only imperfectly to the Dan White case.

It is hard to argue that the failure of justice in the White case was a consequence of official collusion in winking at White's crime. Angered by the verdict in the case, the Logic

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B-6 The Tribune  
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lature swiftly abolished the "diminished capacity" defense. Appalled by the failure of the district attorney's office to win a murder conviction, San Francisco voters promptly elected a new chief prosecutor.

A better argument can be made that White's crime was political, an attempt to eliminate San Francisco's leading liberal and its most prominent gay politician and thus change the political direction of the city. The prosecution at White's murder trial failed to present any of the considerable evidence of the political roots of the assassinations, and it is conceivable that federal attorneys could convince a jury that the shootings were politically motivated and punishable under the civil rights law.

But why the sudden interest in pursuing this outside chance to add to White's punishment? The jury handed down its manslaughter verdict in May 1979, more than four years ago.

Why is it only now occurring to Gov. Deukmejian, who was the California attorney general from 1979 to 1983, that justice was not completely done in the original trial? Why, after nearly three years in power, is the Reagan administration only now considering federal prosecution against White?

A cynic might suggest politics is a consideration. Another Dan White trial next year would make a dramatic and embarrassing counterpoint to the Democratic convention in San Francisco, particularly for Mayor Feinstein, widely regarded as a vice presidential possibility.

But law, not politics, is supposed to govern the decision whether to apply the civil rights statute to White. And though the law worked badly in his case, it did not work so badly that federal intervention is needed to achieve substantial justice.

(Mount Clipping in Space Below)

# Mayor seeks civil rights prosecution of Dan White

Mayor Dianne Feinstein has sent a letter to U.S. Attorney General William French Smith requesting the Justice Department to prosecute Dan White for the 1978 slayings of Mayor George Moscone and Supervisor Harvey Milk.

Feinstein's two-page letter to Smith aims to encourage the attorney general to try White under a federal civil rights law that White interfered with the political duties of Milk and Moscone when he murdered them in their City Hall offices.

"Dan White's crime remains an open wound in this city," Feinstein's letter said. The letter sent to Washington, D.C. last Friday was made public Monday.

She wrote: "I sincerely believe Dan White's sentence damaged the credibility of our entire criminal justice system. He is perceived not only as getting away with murder, but as

a public official whose special status somehow enabled him to get away with murder."

Smith is considering the White case even though White is due to be released next January for the voluntary manslaughter convictions he received.

Feinstein's letter to Smith was sent on the heels of a similar letter from Gov. George Deukmejian who has also called on the federal government to try White.

The mayor has endorsed a Board of Supervisors' resolution requesting the Justice Department to try White.

"It is clear to me that Dan White perpetrated these tragic killings to prevent the swearing-in of the man destined to replace him on the Board of Supervisors and, therefore, to prevent Mayor Moscone from carrying out his official act of appointment," she wrote in her letter.

(Indicate page, name of newspaper, city and state.)

Date: 9-28-83

Edition: Wed.  
A2 S.F. Progress  
San Francisco, Ca.

Title:

Character:

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Classification:

Submitting Office: SF

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| SEP 30 1983          |                   |
| FBI - SAN FRANCISCO  |                   |

(INFO)

44 C - 2178-14

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(Indicate page, name of newspaper, city and state.)

(Mount Clipping in Space Below)



... The buzz around the Fed 1 Blog here is that Washington will refuse to prosecute Dan White on the grounds that it is "purely a local issue." If this turns out to be so, watch the gay community erupt ... Related sightem: The sign reading "95 Days Till Dan White Is Free" posted on the side of Bank of America at Castro and Market; the number, which is changed daily, started at 100 ...

Date: 10-5-83  
 Edition: 6 Star  
 37 S.F. Chronicle  
 San Francisco, Ca.

Title:

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Classification:

Submitting Office: SF

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44C - 2178-15



## FEDERAL BUREAU OF INVESTIGATION

1Date of transcription 10/7/83

Assistant United States Attorney (AUSA) [redacted]  
Northern District of California, reviewed a letter from John P. Elia,  
dated September 21, 1983.

AUSA [redacted] advised he wished no further investigation by  
the FBI regarding this letter.

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AUSA [redacted] further requested the original of this letter,  
which was then given to him by SA [redacted] (after conferring  
with the San Francisco Federal Bureau of Investigation Legal Advisor).

A copy of this letter is attached to and considered a part  
of this FD-302, consisting of one page.

Investigation on 9/30/83 at San Francisco, California File # SF 44C-2178 -16  
by SA [redacted] /rmw Date dictated 9/30/83

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency;  
it and its contents are not to be distributed outside your agency.

(Indicate page, name of newspaper, city and state.)

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**Bay digest**

Compiled from staff and wire reports

**Next for Dan White?**

JUSTICE DEPARTMENT officials in Washington are still "closely examining" whether federal charges should be brought against Dan White for killing San Francisco Mayor George Moscone and Supervisor Harvey Milk nearly five years ago. No decision has been made, they stressed last night, after KGO-TV in San Francisco reported that the Justice Department won't prosecute White on federal civil rights charges. U.S. Attorney General William French Smith or his deputy, Edward Schmults, must decide whether the case warrants federal civil rights prosecution before Nov. 27, when the statute of limitation ends. That's the fifth anniversary of the double slayings in San Francisco's City Hall. White was charged with murder but found guilty of voluntary manslaughter and sentenced to the maximum term possible under state law, seven years and eight months. With that reduced for good behavior, he's due for parole Jan. 6 after serving five years. If tried under the federal Civil Rights Act of 1968 and convicted, he could be sentenced to federal prison for two life terms.

Date: 10-25-83

Edition: Final

C3 S.F. Examiner  
San Francisco, Ca.

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Submitting Office: SF

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440-2178-17

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# New Report, and a Denial, on Dan White Case

A San Francisco television station broadcast a report yesterday that said the Justice Department has recommended against prosecuting Dan White on federal civil rights charges — but a Justice Department spokesman in Washington denied the story last night.

The report, broadcast on KGO-TV, quoted unnamed Washington sources as saying that the final decision to prosecute White under federal law rested with Attorney General William French Smith and that Smith had received a recommendation against such prosecution.

But according to Justice Department spokesman John Russell, "the Dan White case is still being studied by the criminal division and no decision has been made."

In San Francisco yesterday, both the U.S. attorney's office and the San Francisco Police Department also said no federal decision had been made in the White case.

"I would expect to be the first to know," said U.S. Attorney Joseph Rusoniello. "We have no information about any decision that has been made."

Police officials told The Chronicle that they had not been notified of any decision either, and that they expected to be told — one way or another — before any public announcement. White's light sentence set off a night of rioting in 1979.

John Wahl, an attorney for the estate of Harvey Milk, had asked the attorney general to prosecute White under a civil rights law that covers the murder of political figures. Both Mayor George Moscone and Milk had filed for re-election when they were killed by White in 1978.

The request, later supported by Governor George Dukakis, Mayor Dianne Feinstein and others, is being carefully studied in the

Justice Department, sources said, because the civil rights law had never been applied in this manner.

Wahl called yesterday's KGO report "a trial balloon by the Justice Department."

Under federal law, the Justice Department has until November 27 to decide whether to try White under the civil rights law. White, 37, is now scheduled for release from San Francisco Prison on January 6.

(Indicate page, name of newspaper, city and state.)

Date: 10-25-83  
Edition: 6 Star  
4 S.F. Chronicle  
San Francisco, Ca.

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Submitting Office: SF

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44C - 2178 - 18



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# Decision on Dan White case due soon

BCN — With less than three weeks to go before the deadline for a decision on a federal prosecution of Dan White, a U.S. Department of Justice spokesman says a determination will be made "soon" but he does not know exactly when.

"It's still a pending case," department spokesman John Russell said from Washington late last week. "The decision will be announced soon but I can't be specific about when."

White, 37, is due to be released from Soledad State Prison on Jan. 6 after serving a little more than five years in custody for his state court conviction for the 1978 slayings of San Francisco Mayor George Moscone and Supervisor Harvey Milk.

The executor of Milk's estate and several local politicians, including the city's Board of Supervisors and Mayor Dianne Feinstein, have asked for an additional federal prosecution of White on charges of violating Moscone's and Milk's civil rights.

Any federal indictment of White must be handed down by Nov. 27, the five-year an-

niversary of the fatal shootings of the two men at City Hall.

The civil rights law under which the prosecution has been urged provides for penalties of up to life in prison for the killing of participants in certain federally protected activities, including running for office.

In the latest development in the case, San Francisco District Attorney Arlo Smith said he talked to a Justice Department staff attorney in Washington last week about his request that the agency consider looking into an allegation that a sworn statement by a witness appears to be inconsistent with testimony given by a homicide detective in the case.

Smith also said he has ordered an investigation by his staff into the matter and that he plans to inform the Department of Justice of the result of that inquiry when it is completed.

According to Smith, former City Hall aide Gale Kaufman is alleged to have said in a signed statement that she saw Homicide Detective Frank Falzon view Milk's body at the scene of the shootings at City Hall.

Falzon testified at

White's trial in San Francisco Superior Court that he did not go to the vicinity of Milk's body, according to trial transcripts.

The detective said last week he was "astonished" by the allegation that he saw Milk's body at City Hall. He said he did not know that Milk as well as Moscone had been killed until after he left the building.

Smith said he told the Justice Department staff attorney to whom he talked that the allegation "might be something they want to take into consideration." He said he asked the staff attorney to look for a letter Smith sent to Washington last Wednesday forwarding information about the statement.

Smith said he did not know what relevance the allegation, if proved correct, would have to the case. He said the staff attorney said he would look for the letter but "gave no indication of where they were in the decision" about whether to seek an indictment.

He said his investigation about "what is the true fact" is being carried out by a senior investigator who is attempting to contact everyone who was at the scene.

(Indicate page, name of newspaper, city and state.)

Date: 11-9-83  
Edition: Wed.  
A7 S.F. Progress  
San Francisco, Ca.

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Submitting Office: SF

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Falzon together with Herman Clark was the chief investigator in the district attorney's prosecution of the White case.

He said on Thursday that he only became aware of Milk's killing after he had left City Hall and learned that White was being held at the Police Department's Northern Station. A back-up team of homicide investigators was then dispatched to deal with the Milk murder, he said.

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(Indicate page, name of newspaper, city and state.)

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Date: 11-3-83  
 Edition: 6 Star  
 4 S.F. Chronicle  
 San Francisco, Ca.

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 Submitting Office: SF

Indexing:

## New Wrinkle in White Case

By Maitland Zane

San Francisco District Attorney Arlo Smith complained yesterday he is getting the brushoff in his efforts to persuade the Justice Department to prosecute Dan White on federal charges in connection with the murders of Mayor George Moscone and Supervisor Harvey Milk.

Amid rumors that federal prosecutors will make a decision this week, Smith has been asking them to consider an unconfirmed report that questions the credibility of one of the homicide inspectors who investigated the case and was a witness in the White trial.

But the district attorney said yesterday that Assistant U.S. Attorney General Lowell Jensen, chief of the Justice Department's criminal division and his classmate, Poalt

Hall law school, has not responded to his phone calls this week.

"There's been no movement in the case," Smith said yesterday. He has been urging federal officials to prosecute White under federal civil rights laws.

In frustration, the district attorney yesterday sent a telegram to Attorney General William French Smith, asking for consideration of a report from a former City Hall aide who said she saw a homicide inspector view Harvey Milk's body at the scene, although he testified to the contrary at the White trial.

The inspector, veteran homicide Detective Frank Falzon, has denied the claim by former City Hall aide Gale Kaufman that she saw him at the Milk death scene shortly after the shootings on Nov. 27, 1978.

"The statement I gave on the

witness stand was true and factual and I stand behind it," Falzon said yesterday. "I never saw Milk's body until I saw him on a slab in the coroner's office."

It is unclear what effect the allegation, if true, might have had on the White trial, other than to raise questions about Falzon's credibility as a witness. The district attorney has assigned one of his own investigators to look into the report.

If White is not indicted on federal charges by November 27, the five-year statute of limitations will have run out and he must be freed from Soledad Prison on January 6.

Kaufman was Supervisor Quentin Kopp's aide at the time of the City Hall assassinations and now works in Sacramento as a consultant to Assembly Speaker Willie Brown.

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440-2178-20

(Indicate page, name of newspaper, city and state.)

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## Kopp aide 'confused' in Dan White testimony

San Francisco District Attorney Arlo Smith says a former City Hall aide was "confused" when she disputed the trial testimony of homicide inspector Frank Falzon in the Dan White case.

Smith said last night that his office conducted an investigation of a sworn statement made by Gayle Kaufman, who was an aide to Supervisor Quentin Kopp at the time of the assassinations of Mayor George Moscone and Supervisor Harvey Milk on Nov. 27, 1978.

According to Smith, Kaufman said she had observed Falzon in the vicinity of Milk's office and had seen him viewing Milk's body.

In his trial testimony, Falzon told the court he had gone nowhere near the body.

The woman later changed her mind, Smith said. She said she did not see Falzon viewing the body, but she insisted she saw him in the vicinity of Milk's office, Smith related.

"Therefore, we think she was confused," said Smith.

It was Falzon who heard the confession of then-Supervisor Dan White, later convicted of voluntary manslaughter in the City Hall slayings.

Smith said he took statements from eight other persons who were at the scene that morning, and they corroborated Falzon's testimony that he did not see Milk's body.

Date: 11-9-83

Edition: Final

D2 S.F. Examiner  
San Francisco, Ca.

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Classification:

Submitting Office: SF

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44 C - 2178 - 21



(Mount Clipping in Space Below)

## Dan White Case Witness Upheld

District Attorney Arlo Smith said yesterday he is satisfied that a veteran homicide inspector was telling the truth when he testified during the 1979 murder trial of Dan White.

The issue arose last week, when a former City Hall aide said she saw Inspector Frank Falzon at the death scene of Supervisor Harvey Milk shortly after Milk and Mayor George Moscone were killed on Nov. 27, 1978.

Falzon, who played a key role in the investigation of the shootings by White, said he had never seen Milk's body in the supervisor's City Hall office.

Yesterday, Smith issued a statement that said Falzon's version "has been corroborated" through interviews with eyewitnesses.

"The declaration of Ms. Gale Kaufman, who stated that she saw Frank Falzon come into the area and view Milk's body, has been reviewed with Ms. Kaufman and eight other persons at the scene," Smith's statement said.

"Ms. Kaufman now states she saw Falzon in the corridor before Milk's body was removed, but did not see Falzon view the body of Supervisor Milk.

"It is our belief that Ms. Kaufman was confused about seeing Inspector Falzon in the supervisors' offices area on the morning of Nov. 27, 1978."

Falzon responded yesterday, "I am hurt by the way Mr. Smith handled this whole affair. I feel I was used as a political ploy for Mr. Smith to gain further support in the gay community.

"Why did he fire off a telegram to the U.S. attorney general saying that he was 'investigating new evidence' (in the Dan White case) without ever contacting me ~~until~~ after he announced the investigation?"

(Indicate page, name of newspaper, city and state.)

Date: 11-9-83  
Edition: 6 Star  
2 S.F. Chronicle  
San Francisco, Ca.

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| FBI — SAN FRANCISCO  |                   |

44C-2178-22

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/16/83

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[redacted] residing at [redacted]  
[redacted] telephone number [redacted]  
advised that he is currently employed on a limited duty basis with the San Francisco, California Police Department. After being advised of the identity of the interviewing Agents and the purpose of the interview, [redacted] provided the following information:

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In 1967 or 1968 he met [redacted] while attending a criminology class at San Francisco City College, and has had occasion to contact her over the years since that time. In July or August, 1978, [redacted] telephoned [redacted]. He cannot recall the reason for the call, but made a statement or asked a question to the effect of: "How would you like to have [redacted] for mayor?" [redacted] stated he could not recall [redacted] reaction, but he does vaguely recall something about Christmas being mentioned during this conversation.

[redacted] stated that he has no specific knowledge of any conspiracy or plan to kill the then [redacted] or Mayor George Moscone by any person or persons in the San Francisco Police Department, or in the San Francisco community in general. [redacted] then added that in retrospect, he believed the comment was based on a general perception of the community feelings at that time, i.e. that there were people who had been prosecuted and sent to prison who had misread the intent of the District Attorney's office; that downtown businessmen and hotel operators were upset over the proliferation of prostitution in the city; and a general disaffection in the police department with both [redacted] and Moscone. At that time, there were bumper stickers on police cars reading, "Our Gain is Your Loss." In short, almost every facet of San Francisco society had a hardcore group of dissatisfied people, anyone of which could have acted irrationally and violently as a result of ongoing frustration with the civic leadership.

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[redacted] then added that "It just came out by accident that Moscone was killed before Christmas." "I think White flipped out legitimately."

Investigation on 11/7/83 at SAN FRANCISCO, CA. File # SF 44C-2178

by SA [redacted] pfh Date dictated 11/14/83

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SF 44C-2178  
LRW/pfh

Continuation of interview of [REDACTED]

, Page

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[REDACTED] stated that he had never met or heard of John Wahl prior to November 6, 1983, and that [REDACTED] and others had tried to induce him to make a more definitive statement regarding this matter but he knows of nothing beyond what he has stated.

[REDACTED] executed a FD-328, Consent to Interview with Polygraph, form regarding his knowledge of this case which is attached to this FD-302.



## CONSENT TO INTERVIEW WITH POLYGRAPH

PLACE: SAN FRANCISCO, CA.  
DATE: Nov. 7, 1983  
TIME: 10:48 AM

Before we begin an examination by means of the polygraph in connection with THE CIVIL RIGHTS INVESTIGATION OF THE DAN WHITE MURDER CASE AND MY PERSONAL KNOWLEDGE OF THE FACTS OF THIS CASE.

you must understand your rights.

YOUR RIGHTS

You have the right to refuse to take the polygraph test.

If you agree to take the polygraph test, you have the right to stop the test at any time.

If you agree to take the polygraph test, you have the right to refuse to answer any individual questions.

WAIVER AND CONSENT

I have read this statement of my rights and I understand what my rights are. I voluntarily agree to be examined by means of the polygraph during this interview. I understand and know what I am doing. No threats or promises have been used against me to obtain my consent to the use of the polygraph.

[Redacted Signature Box]

b7E

SIGNED

[Redacted Signature Box]  
(Examinee)

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\_\_\_\_\_  
(Examiner)

WITNESS:

[Redacted Witness Box]

JOHN ESHLEMAN WAHL

ATTORNEY AT LAW  
35 GROVE STREET  
1232 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94102

415-863-8555

U.S. ATTORNEY  
S.F. CALIFORNIA  
REFER TO \_\_\_\_\_

1983 OCT 21 AM 8 20

October 20, 1983

CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED

DUPLICATE ORIGINALS

Honorable William French Smith  
Attorney General of the United States  
Department of Justice  
Washington, D.C. 20530

Honorable Edward C. Schmults  
Deputy Attorney General  
of the United States  
Department of Justice  
Washington, D.C. 20530

Honorable D. Lowell Jensen  
Associate Attorney General  
of the United States  
Department of Justice  
Washington, D.C. 20530

Re: Request for Prosecution of Dan White,  
Pursuant to Title 18, U.S.C. § 245, for  
Violation of Civil Rights of Mayor  
George Moscone of San Francisco and  
Supervisor Harvey Milk of San Francisco,  
by Murdering them Because of their  
Political Activities Within the Exercise  
of their Offices as Mayor and Supervisor

Dear Messrs. Smith, Schmults and Jensen:

I believe that the following facts should be considered by the Attorney General in making a decision to certify that the prosecution of Dan White is in the public interest, and necessary to achieve substantial justice, pursuant to 18 U.S.C. § 245. These facts show that the State's prosecution of Mr. White was undertaken with, at the very least, reckless and wanton disregard of normal prosecutorial standards. These facts, all taken together, show that the State's prosecution of Mr. White amounted to prosecution which assisted his interests.

Further, there are grave questions raised by these facts. The first question raised is whether or not there was a conspiracy to diminish the force and effectiveness of the State's prosecution. The second question is whether there was a pre-existing conspiracy to kill Mayor Moscone and Supervisor Milk.

Hon. William French Smith  
Hon. Edward C. Scmults  
Hon. D. Lowell Jensen  
October 20, 1983

Page Two

Before outlining the facts mentioned, I believe that it is necessary to discuss another matter of considerable concern. We, here in San Francisco, do not know what recommendation the United States Attorney (Joseph Russoniello, Esq.) has made to you concerning this case, since he apparently has declined to disclose his views. However, we believe that this case should proceed to trial without any question of further infection. We believe that a prosecution should be conducted by someone who cannot possibly be accused by anyone, of having any bias. It would be possible for someone to make that accusation concerning Mr. Russoniello, since I am informed that [redacted] in the State trial), was a member of Mr. Russoniello's campaign committee when Mr. Russoniello ran for District Attorney (in the 1979 election, after the murders and after the State trial). Further, Mr. Russoniello had been a member of the San Francisco District Attorney's Office --- which was the office that conducted the State's trial --- for a number of years before he left that office to enter private practice.

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The facts mentioned above are:

1. When the assassinations were announced, I am informed that there was cheering on the Fourth Floor of the Hall of Justice (where there are numerous Police Department offices). As is well known, and as San Francisco Examiner Reporter Russ Cone concretely demonstrated in his 1979 article in New West Magazine, the murders caused a profound change in the settlement of a pending lawsuit against the City and County of San Francisco, having to do with racial discrimination in the Police Department. I attach hereto a photocopy of that article.

2. The police officer who first went to the scene, Officer [redacted] was instructed to write a different report than the report he first turned in.

3. The investigating officer, [redacted], was biased in Mr. White's favor. He sat through the trial next to the prosecuting attorney, Mr. Thomas Norman but then testified (on cross-examination by White's attorney) as a defense witness for Mr. White. [redacted] called White "a man among men" [Reporter's Transcript page 296], and went into great detail about White's (to him) exemplary character and service [Reporter's Transcript pages 300-304]. [redacted] had been a long-time friend of Dan White, even having been his [redacted].

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Hon. William French Smith  
Hon. Edward C. Schmults  
Hon. D. Lowell Jensen  
October 20, 1983

Page Three

4. [redacted] who had been first assigned to the murder of Supervisor Milk, was pulled off the case, and that murder was then assigned to [redacted] (as well as the Moscone murder, to which he had been originally assigned). [redacted] was not a particular friend of Dan White. (In fact, at the time, [redacted] the mostly-black Officers For Justice organization, which was the prime plaintiff in the lawsuit pending against the City for racial discrimination in the Police Department.) I am informed that [redacted] would have given strong testimony concerning White's murderous intent, based upon the way Supervisor Milk had been shot.

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5. The confession obtained from Mr. White (again, by [redacted], was taken in a manner which helped Mr. White. He was allowed to give his confession in a narrative form in an emotional manner, which concentrated on describing his feelings, which affected the jury in his favor. The confession was taped, and the tape was played to the jury. [redacted] did not ask White anything about how he gained entrance to City Hall (by climbing into a basement window, to avoid the metal detectors at the main entrance, which would have detected the murder weapon). Thus a vital piece of evidence, bearing on intent, was kept out of the emotional appeal of the tape, when it was played to the jury.

6. Apparently key prosecution witnesses were not even talked to by the prosecution on the day they were put on the stand, and thus there was no preparation for their testimony. For example, I am informed that [redacted] who had been Supervisor Milk's [redacted] and who had been aware of a months-long grudge on White's part, was merely called at his home, and told to be down at the Hall of Justice on the day of his testimony, and then put on the stand "cold". He was not asked about White's animosity. The same thing happened to [redacted], a San Francisco Chronicle Reporter, who testified as a rebuttal witness, with regard to being put on the stand "cold". [redacted] also, had evidence bearing on intent - he had heard White threaten the Mayor - but there was apparently no intent to use his testimony until he volunteered to testify.)

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7. There was other evidence of White's pre-existing intent to kill the Mayor and Harvey Milk, which was made known to the prosecution and not used:

(A) [redacted] whose declaration you already have, informs me that he told District Attorney [redacted], of White's telephone call to him [redacted]

Hon. William French Smith  
Hon. Edward C. Schmults  
Hon. D. Lowell Jensen  
October 20, 1983

Page Four

which indicated an intent to harm Moscone and Milk. [redacted]  
[redacted] was never called as a witness.

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(B) When White went to Northern Police Station to surrender to his friend Officer [redacted], he asked [redacted] to keep for him a book jacket he, White, had been carrying during the murders. The jacket was for Leon Uris' book "Ireland: A Terrible Beauty", which is a book about the Irish revolutionary movement. The fact that White carried this jacket, and not the book, and wanted the jacket kept safely, is a statement of his self-identification as a revolutionary -- a political warrior -- and evidence of the political motivation for the murders. The prosecution did not use this fact at all.

8. Dan White had his loaded pistol with him, and exactly enough extra bullets, in his pocket, to reload his pistol twice - a total of three loads of bullets - when he entered City Hall to do the murders on November 27, 1978. In the recorded radio transmissions of the San Francisco Police Department immediately following the murders of Moscone and Milk, one officer laughingly asked, on the radio, who the victim was. Three minutes later, after the information was passed that both the Mayor and Harvey Milk had been shot, an officer asked if they should send a third ambulance.

9. [redacted] went to City Hall, in the company of (then) Deputy District Attorney [redacted]. [redacted] is now an Assistant United States Attorney, in the office of the United States Attorney for the Northern District of California.) [redacted] denied (in his trial testimony) that he saw Supervisor Milk's body while he was at City Hall [Reporter's Transcript page 264]. [redacted] then went to Northern Station, in the company of Deputy District Attorney Thomas Norman (who later was the State's prosecutor). Both [redacted] and Norman, have stated that they did not talk to White at Northern Station. However, White spent at least sixteen minutes at that Station. It was later, at the Hall of Justice, that [redacted] took White's unusual narrative confession, which emphasized White's feelings, and which did not go into such matters as how White entered City Hall (through the basement window, avoiding the metal-detectors), and which was introduced at the State's trial.

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\* 10. [redacted] states that a San Francisco Police Officer (whom she has known for some years, and whose name and address I am providing, under separate cover, only to the addressees of this letter), informed her approximately five months before the murders that this officer had received information that Mayor Moscone would be dead by Christmas. (The officer had earlier told [redacted] that there was a conspiracy among police officers to kill the Chief of Police, then [redacted], and in the conversation mentioned

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Hon. William French Smith  
Hon. Edward C. Schmults  
Hon. D. Lowell Jensen  
October 20, 1983

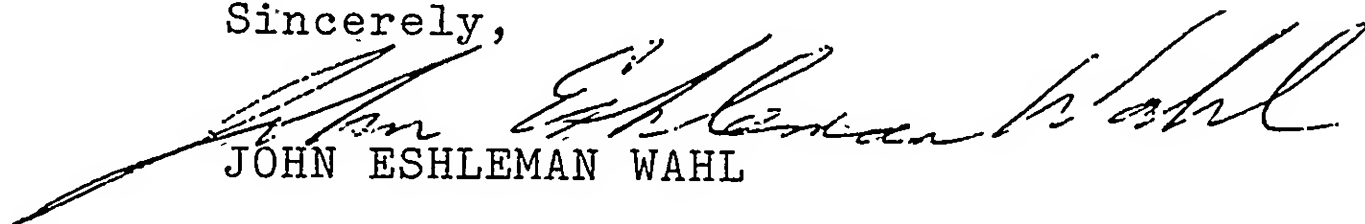
Page Five

above the officer told her that the conspiracy had shifted its target to the Mayor. [redacted] warned the Chief after learning of the threat to him. [redacted] has apparently passed a lie-detector test concerning this matter.)

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We will continue to develop evidence to assist you in your prosecution.

Sincerely,



JOHN ESHLEMAN WAHL

JEW:ma

cc: Mr. Joseph Scott Smith, Executor of the Estate of  
Harvey Bernard Milk, Deceased

→ Joseph Russoniello, Esq., United States Attorney for  
the Northern District of California

Hon. George Deukmejian, Governor of California

Lawrence Lippe, Esq., Chief, Litigation and Advice Section,  
Criminal Division, Department of Justice



# WHAT WAS THE REAL MOTIVE BEHIND GEORGE MOSCONE'S MURDER?

"... In quitting the Board of Supervisors, Dan White left unguarded the aspirations of more than a third of San Francisco's cops ..."

**T**HOMAS NORMAN, who prosecuted former San Francisco Supervisor Dan White at his trial for the murders of Mayor George Moscone and Supervisor Harvey Milk, told the jury only that White killed because he had been frustrated in his attempt to regain public office. Norman ascribed no deeper motive, no other reason why the man who so glibly gave up his job had, in seventeen days, become angry enough to kill because he couldn't get it back. Apparently convinced of the frustration motive, the jury found on May 21 that White's acts constituted voluntary manslaughter, for which he may be free in five years.

Yet White had another motive—the most compelling yet. This motive fits as snugly into White's personality as his police .38 fit into its holster. This motive

was never mentioned at his trial, even though it provided evidence that White's crime had been committed in order to affect a political decision—and, as such, was one of the few crimes punishable by death under California law.

**O**N THE afternoon of Friday, November 10, 1978, City Hall reporters reluctantly bestirred themselves in response to an invitation to meet Supervisor Dan White in his office, across the hall from the press room.

For a change, Dan White had some real news to announce. He had just given Mayor Moscone his letter of resignation from the eleven-member Board of Supervisors. With the earnest ineptitude that had marked the ten months of his legislative career, White announced: "What is

happening is that neither my family is being taken care of as they should be nor are my constituents ... I didn't have any time to be both [sic] a good husband, father and supervisor."

Not consulted in White's decision were his fellow supervisors, or his newfound friends in the city's real estate business, or his old school chums, or, most importantly, his comrades-in-arms and soulmates in the San Francisco Police Officers Association.

White seemed relieved, not worried or saddened, by his decision, which under Section 3.100 of the San Francisco Charter left it to Moscone to appoint someone to serve out the remaining 38 months of White's term.

Moscone, a card-carrying procrastinator with seemingly nothing to lose, told reporters he would not rush his appointment. In fact, he was savoring the moment. For the first 34 months of his administration, Moscone, a liberal Democrat, a protégé of Congressman Phillip Burton and a close friend of Assemblyman Willie Brown Jr., had bucked a conservative 6 to 5 majority on the Board of Supervisors. Moscone had issued an unheard-of two dozen vetoes, and had been overridden often. Now, without lifting a finger, Moscone was going to gain his edge. The White knight, who had voted down Moscone's business taxes and who constituted the deciding vote against Moscone's settlement of a minority and women police officers' suit, had thrown down his spear.

In doing so, Dan White left unguarded the career aspirations of more than one third of San Francisco's patrolmen.

**I**T WAS something that I thought about. I don't believe I ever discussed that with anybody ... I think it was instantly recognized around City Hall and there was nothing really to discuss."

The speaker is attorney Darrell Salomon, a bright young antitrust lawyer and president of the city's Civil Service Commission—the agency whose past practices of police recruitment and promotions were the target of the minority officers' suit. Salomon is speaking of the

*Russ Cone is a reporter for the San Francisco Examiner.*



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## "... Moscone's career interests took him to the left of his cultural brethren on the force ..."

period between Dan White's unexpected resignation and those moments around 11 A.M. on Monday, November 27, 1978, when White dispatched Moscone and Supervisor Harvey Milk with shots from his snub-nosed .38. The matter that was "instantly recognized" was the almost certain effect of White's resignation on the Officers for Justice litigation.

Public Advocates, a public-interest law firm, had brought the OFJ's allegations of racial discrimination into court in 1973. Their suit asked \$43 million in back pay and damages to women and to blacks and other minorities, a catch-up on minority hiring and promotions, and guarantees of fair chances in the future.

The OFJ is a small group, made up largely of minority and women officers. In the scheme of San Francisco things, it was no match, politically, for the 1,500-member San Francisco Police Officers Association, whose roots run far and deep into the Irish Roman Catholic society that once dominated San Francisco. Dan White, son of a San Francisco fireman, had attended St. Elizabeth Grammar School and Riordan High School, and he had been a POA member during his two stints on the force. The POA is Dan White's peer group, his old-boy network—the fraternity that houses the locked-arms loyalties of a man's youth.

The POA had clout, but the Officers for Justice had a powerful ally—the federal government. A number of huge federal subsidies stipulated a showing of good faith in integrating the work force. If prejudice were demonstrated in federal court by the OFJ, San Francisco could lose \$100 million in federal subsidies and risk the court's assessment of OFJ's claimed damages.

The federal ramifications were so frightening that they were barely mentioned during the first four years that City Hall, in defense of civil service and the POA, wrestled with the allegations in U. S. District Court.

The gut issue for City Hall and the POA was preservation of seniority rights and promotion opportunities for current members of the predominantly white constabulary. The last police promotion exams had been held in 1976. Those exams produced 214 qualified candidates for the \$1,862-a-month job as assistant inspector, the gateway to plainclothes work and the more glamorous, higher-paying assignments. They also produced 384 qualified candidates for sergeant, the stepping-stone to the command positions of lieutenant, captain and deputy chief. Deputy chief—now, there's a job goal: \$47,184 a year, with a \$35,000-plus

yearly pension for the man with 30 years' service. For police patrolmen making \$1,735 a month, the assurance of fair and orderly access to the 587 posts in higher-paying ranks, with concomitant influence on pension, is as important a motivation as one is apt to find in the American labor market. (These promotions are worth \$1.3 million per year in gross pay increases to those affected.)

U.S. District Judge Robert Peckham had prevented the city from using the 1976 promotion exams, pending settlement of the OFJ suit.

**G**EORGE MOSCONE was the genial darling of the city's liberal community, a former supervisor who had become the effective Democratic whip of the state senate. When he stepped into the carpeted mayor's office on January 8, 1976, remorseless winter had descended upon the POA.

Though he was himself a product of San Francisco's Catholic heritage, Moscone's career interests took him far to the left of his cultural brethren on the police force. He had allied himself with the California Democratic Council, worked in hostile Mississippi against discrimination, and battled openly for minority and labor rights while selectively supporting development and big-business interests. Moscone had secured his narrow victory with the support of blacks and gays and the militant electioneering of members of the Reverend Jim Jones's Peoples Temple and the Delancey Street Foundation, a shelter for ex-cons and ex-addicts.

After the election, Moscone left no doubt where his sympathies lay. He passed over the POA and its members in the police command to bring in Charles R. Gain, a former Oakland police chief with a reputation for integrating police operations, as chief of police.

Efforts by Moscone, Gain and District Attorney Joseph Freitas Jr. (who had won election with the same nonestablishment coalition) to publicize a new tolerance in law enforcement backfired dangerously in 1976. Prostitution, with its attendant assaults, muggings and robberies, was blossoming out of control in the downtown hotel-tourist area.

It took more than a year to catch up with the hoodlum elements, turn around crime statistics and achieve a measure of equilibrium in a demoralized police department. Even today, the force has not recovered completely. Its ranks dwindled from 1,826 in January, 1976, to 1,583 at recent count. This decline in manpower—encouraged, says the POA, by Gain's "less is more" policies—has made



officers angry. This open antagonism toward Gain has influenced Mayor Feinstein in asking him to resign by January, 1980.

Nineteen seventy-seven brought the first major change in the structure of San Francisco government since the 1932 reform charter: The seats of all eleven citywide supervisors were put up for election on a district basis. The district election blueprint, complete with geographical boundaries, was drafted by neighborhood activists and by young turks loyal to the Moscone-Brown-Burton political axis.

From the newly created political enclaves, voters sent Dan White, Harvey Milk, Carol Ruth Silver, Ella Hill Hutch and Lee Dolson to serve with six incumbents on the new board. When they took office on January 9, 1978, gone were conservative former Police Chief Alfred Nelder, conservative black leader Terry François, conservative businessman Peter Tamaras and conservative realtor John Barbagelata, Moscone's arch-foe.

The time had arrived for Moscone and for Bob Gnaizda and Lois Salisbury, his like-minded associates at Public Advocates, to settle the OFJ lawsuit, a matter requiring Board of Supervisors approval.

During numerous sessions in Moscone's office, terms of a settlement satisfactory to Public Advocates and their clients were hammered out with representatives of the city attorney's office, who were carrying out executive instructions to fashion an out-of-court settlement.

"There's no question," Salomon said recently, that by then the city attorney was "if not compelled, certainly influenced, to cooperate with Mayor Moscone in a kind of political way."

Terms of the proposed settlement, when first disclosed in April, 1978, brought anguished cries from the POA. What they objected to was not so much the price tag—\$2,535,000, including up to \$620,000 in back pay to 36 current and former minority officers and \$1,397,000 to those who might claim discrimination. What alarmed the POA more was the setting aside of the 1976 promotion lists until a quota of women and minorities were hired and promoted.

The settlement that Moscone pressed upon the supervisors in secret sessions called for filling temporary positions with a significant number of women and minorities. It called for appointing one woman or minority group member for every white male on the sergeant's list, and appointment of one minority for every three white males on the assistant inspector's list. It also required delaying the lieutenant's examination until all women and minorities promoted to sergeant were eligible to take it.

Moscone argued forcefully for the settlement. Going to full-blown trial risked bitter, public airing of minority griev-

ances and of past police shortcomings, a shut-off of federal revenue-sharing subsidies, and an unfavorable court decision—which could prove far more costly than the settlement.

Then-supervisor Dianne Feinstein termed the Moscone settlement "whole-sale surrender." She declared, "If there has to be a quota system, I'd prefer to see a court-imposed one."

Intoned Supervisor Quentin Kopp: "The city will regret the day when it imposed quotas. This decision injects quotas into every level of the police department." The settlement, he said, was "politically motivated" to please Moscone's constituents.

By a 6-to-5 vote in June, 1978, the supervisors decided to reject Moscone's plan. White's was the sixth and deciding vote.

**B**ETWEEN JUNE, 1978, and last November 10, when the relieved-looking former cop announced he was forsaking the limelight, much had occurred in his personal life. Mary Ann, his wife, had quit her teacher's job to have a baby. The couple had mortgaged their home to invest in The Hot Potato, a food concession at Pier 39, which did not open for business until last October.

By November, the couple, reduced to living on White's \$800-a-month supervisor's salary, was spending 60 hours a week working at the potato shop, caring for their infant son and attending to White's official duties.

Attorney Salisbury acknowledges that Public Advocates at once recognized the opportunity White's resignation presented. And was Moscone alert to that and ready to act as soon as he got his sixth vote? "Uh-huh," says Salisbury.

One may only imagine the anguish with which the POA accepted the news that White had pulled his finger out of the dike. Gerald Crowley, then president of the POA, denies pressuring White to regain his seat on the board. Days after the City Hall slayings, Crowley insisted, "We never urged [White] until after he wanted the job back."

But, says Darrell Salomon, "I certainly think it was pointed out to him by Crowley that his resignation affected a most sensitive legal case. I'm certain that pressure was put upon him."

The fact remains that on November 15, just a week after the OFJ case resumed before Judge Peckham in the federal building one block from City Hall, White reappeared at City Hall to ask Moscone to return his resignation and to allow him to resume his legislative duties. Crowley and other POA members were among a gaggle of well-wishers who showed up at City Hall to witness another Dan White press conference.

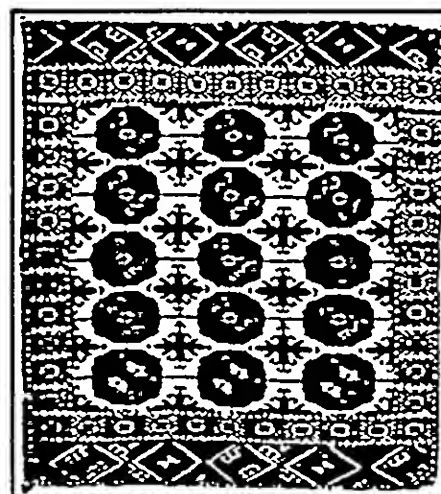
White told the press: "I looked at my



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“... What had begun as a personal sacrifice became a betrayal of friends and values ...”

decision as a personal decision, but it turned out there were hundreds of people out there who felt the decision affected them.”

Neither press nor public was then aware that 413 of White's former colleagues on the police force, whose names were on the 1976 promotion lists, were among those “hundreds of people out there.”

A somewhat bewildered Moscone, who had spent the days since November 10 searching the roster of District 8's 28,000 registered voters to find a name he recognized and might consider as a White replacement, tried to be as pleasant as he could. “I never wanted to see a young man forced out,” he averred generously. He would as soon reappoint Dan, he said ... but there were a couple of legal questions.

By the following week, when the legal questions were cleared up, other candidates for White's post were stirring the hustings and the OFJ lawsuit was encountering tough sledding before Judge Peckham. (After a weak performance by Public Advocates' first witness, Peckham had remarked something like, “If this is the best you can do, you'd better reconsider a settlement.”)

From November 15 until the fateful morning of November 27, White's predicament became increasingly painful. What had begun as a personal sacrifice for love of wife and child suddenly became a witless betrayal of friends, supporters and cherished values. A simple cure—retrieval of the resignation—had failed. As the days passed, Moscone was procrastinating, and fatherly forgiveness was being replaced by political practicality. Harvey Milk and others were prodding him to replace the troublesome White; Moscone himself was beginning to glimpse the happy prospects of a six-vote majority. Day by day White's frustration mounted, and, in the end, it severed his restraints altogether.

**W**ITHIN DAYS of Moscone's death, after Feinstein had secured permanent appointment as mayor and with the OFJ case already in recess, Judge Peckham instructed parties to seek an out-of-court settlement. Darrell Salomon, at Feinstein's behest and working with the POA, had begun to construct that settlement.

By January, Feinstein had won the Board of Supervisors' approval of a new settlement. Public Advocates and OFJ resigned themselves to it.

Terms of the settlement included preservation of the 1976 promotion lists for sergeant and assistant inspector; postponement of the lieutenant's exam until those promoted to sergeant qualified to take it; build-up of force to 1,971; immediate hiring of 30 women and 29 persons fluent in Chinese; establishment of goals (not quotas) for recruiting—50 percent minorities and 20 percent women over the next ten years—and promotion—women and minorities in proportion to their presence in the patrol force. The city was ordered to pay \$1.2 million, including \$385,000 in attorney's fees, a sum for minority training, and back pay to plaintiffs.

It was the first major accomplishment of the new mayor. Judge Peckham approved it in late March, before White's murder trial began.

“We were aware of what the Officers for Justice suit was about,” says prosecutor Thomas Norman, “but it didn't appear that it had any relevant connection” to the White trial.

In four and a half months, bullet-like swiftness for bureaucracy, promotion opportunities for more than one third of the police had been secured, and another generation of traditional police command had been guaranteed.

The most self-sacrificing supervisor of them all, the one who put aside the interests of his wife, his child and himself for what he perceived as the greater good of his class, had succeeded.

## The Milk Connection

**H**OW DID Harvey Milk fit the scenario? The voluble gay lawmaker occupied the cubicle directly across the hall from White's. Milk favored the Moscone settlement. He had humiliated White in public debate. White's young aides, mistakenly retained in City Hall after his departure, doubtless overheard some of the gleeful speculation emerging from Milk's cubicle, and others along the narrow corridor. How much of this filtered imperfectly back to White during the hiatus?

It may not matter, for White could not be certain, even after slaying Moscone, that Moscone's anointed replacement, loan officer Don Horanzy, would not take office. Taking out the ever-present irritant, Milk, was insurance that six votes for the Moscone settlement would not exist.

—R.C.

1 [uf3] Highlights of SFPD radio traffic from  
2 the first report of a shooting in the mayor's office on  
3 27nov78.[ep  
4 10:55 am.--"Police emergency"[ep  
5 (Voice of Moscone [redacted]): "I'm  
6 in the mayor's office. [redacted]. I want an ambulance.  
7 Code 3, Room 200."[ep  
8 "Room 200?"[ep  
9 "Code 3!"[ep  
10 "What's going on there?"[ep  
11 "We don't know yet. Somebody's been shot. A 406 up here. I  
12 want Northern up here immediately..."[ep  
13 (Code 3 is red lights and siren. A 406 is "officer needs  
14 assistance.")  
15  
16 Police op. calls Central Emergency Hospital, in Ivy alley a  
17 block from CHall. "Code 3 mayor's office CH.Code 3.  
18 We have a report of a 217 (shooting)."[ep  
19 11:01:[ep  
20 "HQ to Chief, 904 room 200, Code 3."[ep  
21 (Unidentified voice, chuckling, "Who's the victim?"[ep  
22 HQ: "We have no information on the suspect or the victim."[ep  
23  
24 11:02:[ep  
25 Police [redacted] head of communications,  
26 orders a "Code 33," clearing all channels of the SFPD radio  
27 network for emergency calls.[ep  
28 11:03:[ep  
29 (Unid.voice): "What's the nature of that?"[ep  
30 HQ: "We have a 217 there."[ep  
31 11:04:[ep  
32 HQ: "Code 3, An ambulance to Room 237 City Hall."[ep  
33 (Unid. voice): "Do we need a third ambulance?"  
34 (Unid voice) "Are we looking for anybody?"[ep  
35 HQ: "The unit calling headquarters: no suspect at this time.[ep  
36 11:09:[ep  
37 HQ: "We still have no suspect."[ep  
38 11:10:[ep  
39 (Unid. voice) "Entrances blocked to CH and building sealed  
40 off with a one block perimeter."[ep  
41 11:12:[ep  
42 HQ: "We're still maintaining Code 33 on all  
43 channels."[ep  
44 11:13:[ep  
45 HQ calls for photo lab and crime lab.[ep  
46 11:17:[ep  
47 (Voice of [redacted] or possibly former Homicide Inspector  
48 [redacted] the DA's head  
49 investigator: "ATTENTION ALL UNITS. THE SUSPECT'S NAME IS DAN  
50 WHITE. 32 years, 6 feet, 185 pounds, wearing a three piece  
51 suit. He is a suspect in a 187 at City Hall.  
52 Armed and dangerous. The former  
53 Supervisor MAY BE HEADED FOR PIER 39. Two units respond to  
54 Pier 39...the Hot Potato restaurant."[ep  
55 11:20:[ep  
56 (Unid.voice): "How many victims are expected at Mission  
57 Emergency Hosp?"[ep  
58 HQ: "These are all DOA. No victims to MEH."[ep  
59 11:23:[ep  
60 (Unid. voice) "Get a homicide unit to Room 237.[ep  
61 11:24:[ep  
62 (Patrol car): "We're at the Hot Potato and there's no  
63 sign of the suspect. The suspect hasn't been here."[ep  
64 11:25:[ep  
65 "Where are the victims going?"[ep

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66 (Poss. dispatcher at Central Emergency): "I don't know  
67 where they're going. Harvey Milk  
68 and the Mayor are supposed to be DOR." [ep  
69 11:28 [ep  
70 (Unid. voice, poss. HQ): "Attention all units, we have a  
71 187 and the suspect is former supervisor Dan White. He's  
72 possibly at these old addresses:  
73 1641 Vallejo <# 1, 941-A Visitacion, 515 the John Muir  
74 Apartments." [ep  
75 11:29 [ep  
76 HQ (?): "Additional information on suspect. DW borrowed a  
77 '75 blue Opel 6935JQ from his aide and and may be driving this  
78 vehicle." [ep  
79 11:31 [ep  
80 HQ-"Two units respond to the mayor's residence." [ep  
81 11:34 [ep  
82 " [redacted] A fireman is babysitting at  
83 295 Moscow Street. [redacted] " [ep  
84 11:35 [ep  
85 (Unid. voice): "There's a fireman babysitting Dan  
86 White's baby. Use caution. [ep  
87 11:36 [ep  
88 (Poss. voice of official SFPD  
89 custodian, [redacted] who prepared voice tape): "DAN WHITE  
90 IS IN CUSTODY. THIS INFORMATION CAME ON A  
91 DIRECT LINE FROM NORTHERN STATION AND WAS NOT TAPED." [ep  
92 11:37 [ep  
93 HQ: "Former supervisor Dan White is now in custody. KMA  
94 438 (SFPD radio) clear." [ep  
95 11:38 [ep  
96 (Unid cop): "The blue Opel is located  
97 at Franklin and O'Farrell. Hold for homicide and the crime  
98 lab." [ep  
99 11:47 [ep  
100 "3 [redacted] 300 to Hq.: Did you have anyone have the  
101 station keeper at Northern call me in the mayor's office?" [ep  
102 "...Request a witness leaving CH be detained. She is [redacted]  
103 [redacted] white female wearing a beige top and brown skirt." [ep  
104 11:50 [ep  
105 "We have located that witness." [ep  
106 11:53 [ep  
107 "UNIT WITH THE SUSPECT AND INSPECTOR [redacted] RESPOND DIRECTLY  
108 TO HOMICIDE." [ep  
109 "WE'RE EN ROUTE." [ep  
110 (N.B.: HOMICIDE INSPS. [redacted] AND [redacted]  
111 DROVE DW FROM NORTHERN, WHERE HE HAD SPENT APPROX. 16  
112 MINUTES TO HALL OF JUSTICE.) [ep  
113 11:57 [ep  
114 "HQ TO NORTHERN. DO NOT PROVIDE ANY MORE INFORMATION ABOUT  
115 THE SUSPECT ON THE RADIO." [ep  
116 12:29 [ep  
117 HQ: "Secure Code 33." [ep  
118

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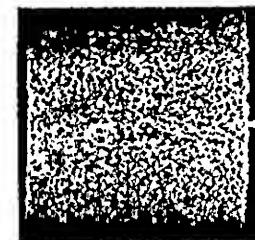
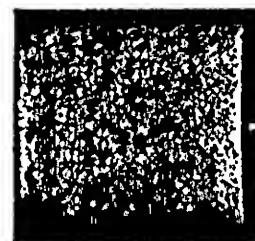




JOHN ESHLEMAN WAHL  
ATTORNEY AT LAW

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1232 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94102

Joseph Russoniello, Esq.  
United States Attorney for the  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, California 94102





U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to  
File No. 44C-2178

450 Golden Gate Avenue  
Box 36015  
San Francisco, California 94102

November 16, 1983

Mr. Joseph P. Russoniello  
United States Attorney  
Northern District of California  
450 Golden Gate Avenue  
Box 36055  
San Francisco, California 94102

Dear Mr. Russoniello:

Re: DAN WHITE;  
MAYOR GEORGE MOSCONE -  
VICTIM (DECEASED),  
SUPERVISOR HARVEY MILK -  
VICTIM (DECEASED),  
SUPERVISOR (MAYOR) [REDACTED]  
[REDACTED] - VICTIM;  
JOHN ESHLEMAN WAHL -  
COMPLAINANT;  
CIVIL RIGHTS - VOTING LAWS

b6  
b7C

Please find enclosed the original and once copy of an FD-302 reflecting the interview of [REDACTED], November 7, 1983 and the original copy of a letter from Mr. John Eshleman Wahl to the Honorable William French Smith dated October 20, 1983.

No investigative report will be submitted as verbally agreed with SA [REDACTED] of this office.

Very truly yours,

1 - Addressee  
1 - San Francisco  
LRW/pfh  
(2)  
Enclosures

ROBERT S. GAST, II  
Special Agent in Charge

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44C-2178-24 FBI/DOJ

(Indicate page, name of newspaper, city and state.)

(Mount Clipping in Space Below)

## Marks wants Dan White prosecuted

State Senator Milton Marks has thrown his hat into the ring along with Mayor Dianne Feinstein and other politicians asking Attorney General William French Smith to prosecute Dan White for the murders of Mayor George Moscone and Supervisor Harvey Milk.

Marks sent a Nov. 4 letter to Smith requesting the U.S. Justice Department try White for violating federal law — Title 18 U.S. Code Section 245 — dealing with violating the civil rights of the two slain politicians who were seeking re-election to office.

Both Mayor Moscone and Supervisor Milk were prospective candidates for re-election at the time of their deaths. Of course, Mr. White's action interfered with their ability to qualify and to campaign for re-election," Marks wrote.

"The anniversary of the death of George Moscone and Harvey Milk approaches," the state legislator wrote. "It would be ironic and, in my opinion, a gross miscarriage of justice if the anniversary were celebrated by the release, after a few short years, of the person who killed them. You have the power and the authority to see that justice is done, and I strongly urge you to take such action."

White, serving his sentence in Soledad Prison, is due for release in early January, 1984.

Date: 11-18-83  
Edition: Fri.  
B4 S.F. Progress  
San Francisco, Ca.

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Date: 11-21-83  
Edition: Final  
A4 S.F. Examiner  
San Francisco, Ca.

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# Reaction in The Castro: 'There'll be hell and havoc' — 'Anger is over'

By Edvins Beitiks  
Examiner staff writer

"You're damn right there'll be protests," said John Marshall, talking about today's announcement that the federal government will not prosecute Dan White. "There'll be hell and havoc on the 27th."

A demonstration is planned at City Hall on the Sunday anniversary of the shootings of Mayor George Moscone and Supervisor Harvey Milk. Today's announcement will give that demonstration more urgency, said Marshall.

Like other residents of the Castro, Marshall was angry at the federal government's decision not to prosecute White on civil rights violations. "Let's put it this way," he said. "I go in a bank and rob the people with a handgun registered in my name, and wind up with maybe 15 years in prison, 15 more on probation. But (White) goes out and kills two people, people in city government, and he gets seven years."

Marshall shook his head, saying, "It makes you wonder: what kind of

power does he really have?"

Gary Finn, 38, standing outside the Star Pharmacy at 18th and Castro, said, "I personally believe that old proverb, 'An eye for an eye, a tooth for a tooth.' There is no reason in the world why he should get off scott free."

Finn said he would join the demonstration Sunday which "may turn into a candlelight vigil."

Other Castro residents expressed disappointment more than anger.

Cleaning the windows outside the Gilded Age on Castro Street, John Becker, 25, said, "The anger is more at the original decision, I think, than over anything going on now. What was the government going to do ... prosecute White for taking away (Milk and Moscone's) rights to run for office? That's really reaching for something."

The jury's decision to give White only seven years is what still sticks in the craw of Castro residents, Becker explained.

Cutting flowers at a stand further down Castro, Peter Cyr, 26, said he doesn't expect White to return to

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Francisco if he's released on parole. "I think this would be the last place he would come," he said. "I can't see him coming back here at all."

At the corner of 18th and Castro, Mark Horvath, 22, and Brian Bailey, 31, said the federal decision was disappointing, but that most of the anger in the community had been used up after the manslaughter verdict.

"I don't think there's going to be any violence," said Bailey. "I think it's gone past that point."

Horvath agreed, adding, "I didn't even know there was going to be a decision made today." Bailey nodded, saying, "It's been such a hush-hush

case. I think it's terrible that they wait until the same week almost until the day of the deaths, before announcing this decision."

Horvath said there's still a lot of anger in the community over the jury verdict but that it seems to come and go. Nodding toward the Bank of America branch, he said, "They had a sign over by the Versateller that kept track of the number of days left before Dan White got out of jail. But somebody took it down."



Gary Finn and John Marshall in The Castro: More disappointment than anger over the Dan White case

Examiner/Gordon Stone



(Indicate page, name of newspaper, city and state.)

(Mount Clipping in Space Below)

# The local reaction



Supervisor Harry Britt, appointed from the gay community to Milk's seat on the Board:

"It's a terrible decision. It's a political decision. No reasonable person can deny that Dan White was attacking the civil rights of these two great men, and all San Franciscans. Every year there's a march on Nov. 27, and this year the gathering should be especially large and angry. But no one should expect violence. But we cannot hide our anger. We must be faithful to that anger because it reminds us that human rights of people are very fragile."

Corey Busch, spokesman for Gina Moscone and press secretary for the late Mayor George Moscone:

"It's an absolute lack of courage... Maybe they felt it was just too political for them. I don't know. I can't for the life of me fathom a justification for them saying it doesn't fit the law. The people of this city ought to be very, very upset... I kept reading about how the Justice Department stepped in in other cases, and in my most cynical moment, I felt there was no way they could justify not doing it here."



Supervisor Quentin Kopp:

"I am not surprised. The reading of that statute rather than just relying on emotion would show interested parties that the chances of conviction under such provision were remote. His crime was murder. It was personal malignancy. His wrong should not be compounded by governmental wrongful abuse of power."

Date: 11-21-83  
Edition: Final  
A12 S.F. Examiner  
San Francisco, Ca.

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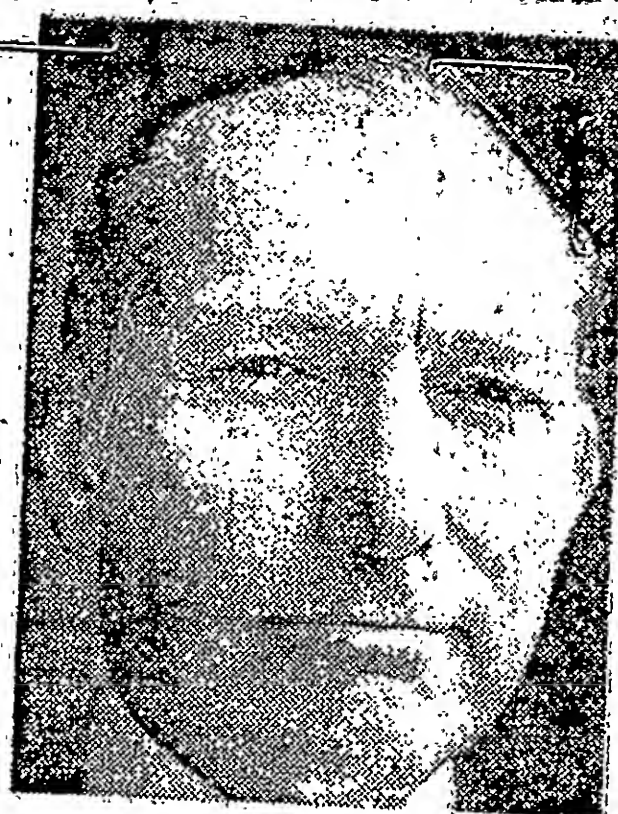
**Carole Migden, president of the Harvey Milk Lesbian and Gay Democratic Club:**

"I'm not surprised but it's extremely distressing news. Once again justice hasn't been served. This Republican government is not too sympathetic to the interests of the gay community. It's (the decision) consistent with the attitude in the White House since the Reagan administration."



**David Scott, gay activist who ran for mayor in 1979:**

"I think it's disgusting that Jimmy Carter's attorney general and now Reagan's attorney general refused to prosecute the case. Neither one chose to protect the rights of the people active in supporting the gay cause. I was surprised and shocked, especially since a Republican governor and the state democratic leadership had supported this action. I just wonder if it had involved somebody else they would have prosecuted the case."



**San Francisco John Wahl, attorney for Harvey Milk's estate:**

"It's fascinating to see how laws are unequally applied in this case. If the mayor had been not George Moscone but George Bush, if the supervisor had been not Harvey Milk but Paul Laxalt, you can bet your boots and bottom dollar there would have been a prosecution. The most fascinating thing about this case is that the federal government only responded and reacted to evidence given them. The victims were very liberal, even radical, but effective politicians who were achieving victory within the system. And Dan White staged a coup d'etat effectively changing the government of San Francisco by force and violence."

(Mount Clipping in Space Below)

# Why government couldn't prosecute

By Bill Burkhardt  
Examiner staff writer

The federal government decided it could not prosecute Dan White under the Civil Rights Act because the slayings of Mayor George Moscone and Supervisor Harvey Milk were not covered under two key sections of the act.

These sections, according to Assistant Attorney General Stephen Trott, say the crime must relate to a person seeking re-election and that injury must be done to someone attempting to overcome discrimination.

"Realistically," Trott explained, "the only activities that George Moscone and Harvey Milk can be argued to have been engaged in at the time of the killings were qualifying or campaigning for election to office. Both Moscone and Milk had filed declarations of intent to seek re-election."

"However, with the exception of these filings, there is no direct or circumstantial evidence that either were qualifying or campaigning for elective office."

It had been suggested, Trott said, that since they were incumbents, any official act could be seen as campaigning.

"This analysis, however, is a distortion of the congressional intent behind the civil rights law," he said. "The legislative history demonstrates that Congress was concerned with the integrity of the electoral process, not with the ongoing protection and safety of elected officials."

Trott said the evidence was not sufficient to prove beyond a reasonable doubt that Moscone and Milk were qualifying or campaigning for offices at the time of the killings. There was no evidence that White knew ~~either~~ man had filed a declara-

tion of intent.

"In fact," he added, "a careful review leads to the supposition that the killings were precipitated by White's anger over the mayor's failure to appoint him to the Board of Supervisors. ... There can be many motives, and it is sufficient if one is because the victim was negating in a protected activity. But the evidence strongly indicates that it was this grievance alone that ultimately compelled White's savage acts and that if a decision had been made to support White (for supervisor) the killings would not have occurred."

The evidence established that settlement of the lawsuit on terms favorable to minority officers was rejected by the supervisors by a one-vote margin in June 1978, Trott said, and White was the one rejecting the settlement.

"The evidence also indicates that Moscone unquestionably wanted to appoint someone whose political views were in closer agreement with his own than White," Trott said. "However, no additional credible evidence was found to support the inference that Moscone wanted to do so in order to turn around the vote on settlement. As for Milk, no evidence was developed to prove that he, other than generally supporting Moscone in his decision to support someone other than White, was attempting to secure settlement of the suit favorable to the minority officers."

"The evidence is that White acted because of his anger at not being appointed. In this regard it appears that White's anger was fueled by his view that the City of San Francisco had degenerated and by the enormous political differences between him and his victims."

(Indicate page, name of newspaper, city and state.)

Date: 11-21-83  
Edition: Final  
A12 S.F. Examiner  
San Francisco, Ca.

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## FEDERAL BUREAU OF INVESTIGATION

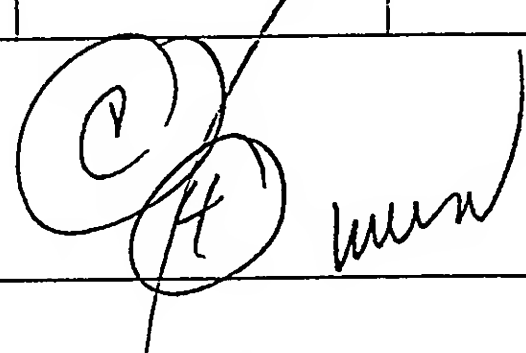
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| REPORTING OFFICE<br>SAN FRANCISCO                                                                                                                                                                    | OFFICE OF ORIGIN<br>SAN FRANCISCO | DATE<br>9/8/83                                             | INVESTIGATIVE PERIOD<br>9/6/83 |
| TITLE OF CASE<br>DAN WHITE - SUBJECT;<br>MAYOR GEORGE MOSCONE - VICTIM<br>(DECEASED),<br>SUPERVISOR HARVEY MILK - VICTIM<br>(DECEASED),<br>[REDACTED]<br>VICTIM;<br>JOHN ESHLEMAN WAHL - COMPLAINANT |                                   | REPORT MADE BY<br>SA [REDACTED]                            | TYPED BY<br>rmw                |
|                                                                                                                                                                                                      |                                   | CHARACTER OF CASE<br><br>CIVIL RIGHTS -<br>VOTING LAWS (C) |                                |

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REFERENCE: Meeting with U.S. Attorney's Office, Northern District of California, 9/6/83.

- C -

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| 2 - U.S. Attorney, San Francisco        |                       |      |       |         |            |                                                                                                                                                                                     |                 |                                                                                                                                                                                   |
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44C-2178-29



UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, SAN FRANCISCO  
(ATTN: AUSA [REDACTED])

Report of: SA [REDACTED] Office: SAN FRANCISCO  
Date: 9/8/83

Field Office File #: SF 44C-2178 Bureau File #:

Title: DAN WHITE - SUBJECT;  
MAYOR GEORGE MOSCONE - VICTIM (DECEASED),  
SUPERVISOR HARVEY MILK - VICTIM (DECEASED),  
[REDACTED] - VICTIM;  
JOHN ESHLEMAN WAHL - COMPLAINANT;  
Character: CIVIL RIGHTS - VOTING LAWS (C)

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b7C

## Synopsis:

In November, 1978, past San Francisco Supervisor Dan White shot and killed San Francisco Mayor George Moscone and Supervisor Harvey Milk. White was subsequently tried and sentenced to prison. He is eligible for release from prison in early 1985. A Civil Rights complaint has been filed with the U.S. Attorney's Office, Northern District of California, alleging that White denied Mayor Moscone and Supervisor Harvey Milk the right to re-election.

- C -

The following is the result of a limited investigation.

DETAILS

On 9/6/83, Assistant U.S. Attorney [REDACTED], Northern District of California, requested that the FBI open a Civil Rights investigation in this matter and conduct one interview.

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## FEDERAL BUREAU OF INVESTIGATION

1Date of transcription 9/6/83

[redacted] Assistant United States Attorney (AUSA),  
Northern District of California, held a meeting with Special Agent  
[redacted] and Federal Bureau of Investigation (FBI)  
Supervisor [redacted].

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AUSA [redacted] made available a copy of a letter from  
Attorney John Eshleman Wahl, dated July 15, 1983.

A copy of this letter is attached to and made a part  
of this FD-302, consisting of eight pages.

AUSA [redacted] advised that the U.S. Attorney Joseph P.  
Russoniello requested that Mr. John P. Elia be interviewed.

Investigation on 9/6/83 at San Francisco, California File # SF 44C-2178  
by SUPV. [redacted] AND  
SA [redacted] MWM/rmw Date dictated 9/8/83

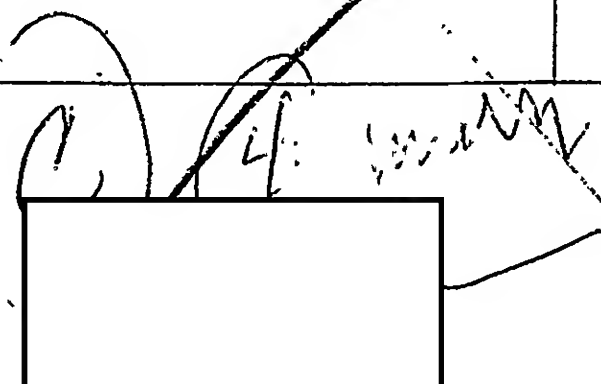
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## FEDERAL BUREAU OF INVESTIGATION

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| TITLE OF CASE<br>DAN WHITE - SUBJECT;<br>MAYOR GEORGE MOSCONE - VICTIM<br>(DECEASED);<br>SUPERVISOR HARVEY MILK - VICTIM<br>(DECEASED);<br>[REDACTED] - VICTIM; |                                   | REPORT MADE BY<br>[REDACTED]                        | TYPED BY<br>rmw                      |
|                                                                                                                                                                 |                                   | CHARACTER OF CASE<br>CIVIL RIGHTS (C) - VOTING LAWS | b6<br>b7C                            |

REFERENCE: Report of SA [REDACTED] dated 9/9/83.

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| ACCOMPLISHMENTS CLAIMED                                      |                       |      |       |         |            | <input type="checkbox"/> NONE | ACQUIT-<br>TALS                                                                                    | CASE HAS BEEN:<br><br>PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/> NO<br>PENDING PROSECUTION<br>OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/> NO |
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| ① - San Francisco (44C-2178)                                 |                       |      |       |         |            |                               |                                                                                                    |                                                                                                                                                                                                         |
| 1 - USA, SF (ATTN: [REDACTED])                               |                       |      |       |         |            |                               |                                                                                                    |                                                                                                                                                                                                         |
| Dissemination Record of Attached Report                      |                       |      |       |         |            |                               | Notations                                                                                          |                                                                                                                                                                                                         |
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UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATIONCopy to: 1 - USA, San Francisco  
(ATTN: AUSA [REDACTED])

Report of: [REDACTED]

Office: SAN FRANCISCO

Date:

10/7/83

Field Office File #:

SF 44C-2178

Bureau File #:

Title:

DAN WHITE - SUBJECT;  
MAYOR GEORGE MOSCONE - VICTIM (DECEASED);  
SUPERVISOR HARVEY MILK - VICTIM (DECEASED);  
[REDACTED] - VICTIM;

Character:

CIVIL RIGHTS - VOTING LAWS (C)

## Synopsis:

Witness John P. Elia write letter to case agent regarding his current whereabouts in case future interview required. Current newspaper articles regarding captioned case enclosed.

- C -

The following is the result of a limited investigation.

DETAILSb6  
b7C

JOHN P. ELIA

450 No. G St  
SAN BERNARDINO CA 92401

SEPTEMBER 21<sup>ST</sup> 1983

DEAR [REDACTED]

I'm at SUNSET HOTEL - I may be  
in SANTA BARBARA ON OR ABOUT OCTOBER 4-1983  
in CASE OF [REDACTED] UROLOGICAL SURGEY -  
in MEANTIME - YOU CAN ~~REACH~~<sup>REACH</sup> ME - BY CALLING  
[REDACTED] OF SAN BERNARDINO POLICE 714/383  
5011 EX-250 - ON EVENING - 714/889-0877 SUNSET HOTEL.

IF I'm HEARD BY U.S ATTORNEY in  
DAN WHITE CASE - I'm READING TO HELP - BUT NOT  
FOR CHIEF LAWYER JOHN E. WAHL I WAS USE BY HIM?

[REDACTED] I TOLD YOU THE TRUTH  
TO MY BEST ACKNOWLEDGE WHAT "DAN WHITE" TOLD  
IN MARCH 1976 -

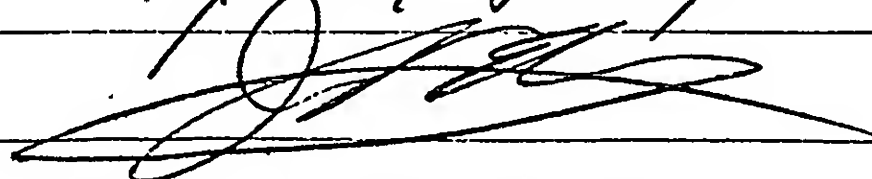
ALL I WANT IS "JUSTICE" DONE  
FOR MUSCONE'S AND MILK'S FAMILY -

BUT I HAD TO COME BACK HERE

[REDACTED] IS A GOOD FRIEND & MAY STAR

CARE - BUT ONE THING - MAKING THE TRIP TO  
SAN FRANCISCO LAST AUGUST 1983 IT COST ME OVER  
\$14.76 FOR HOTEL, ROAD AND BUS FARE OVER  
\$70<sup>00</sup> TO ME IT WAS LOTS OF MONEY - I CAME  
BECAUSE JOHN WAHL ASK ME TO COME

Yours Truly



(Indicate page, name of newspaper, city and state.)

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Date: 11-21-83  
 Edition: Final  
 1 S.F. Examiner  
 San Francisco, Ca.

Title:

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 Submitting Office: SF

Indexing:

# Dan White to go free

## Not enough evidence to prosecute, Justice Dept says

By Tom Hall and Larry D. Hatfield  
 Examiner staff writers

The federal government will not prosecute Dan White for the deaths of San Francisco Mayor George Moscone and Supervisor Harvey Milk, it was announced today.

Six days before the fifth anniversary of the City Hall slayings, U.S. Attorney Joseph R. Russo said the Justice Department has advised him it will not prosecute White under federal civil rights laws. The decision means that White, a former San Francisco supervisor, cop and fireman, will be paroled from Soledad Prison as scheduled on Jan. 6.

White made no comment and showed no expression when he learned of the decision today, spokesman Herb Matthews said.

He was convicted of voluntary manslaughter in May 1979, and sentenced to seven years and eight

months in state prison.

The jury could have convicted White of first-degree murder but was convinced by his attorney, Douglas Schmidt, that White suffered from diminished capacity created by a junk food diet — the notorious "Twinkie defense" — and extreme pressures brought on by his abrupt resignation from the board and Moscone's refusal to reappoint him.

The verdict caused a riot, primarily involving angry gays, around City Hall, and police said they were prepared for a strong reaction to the federal decision not to prosecute White.

Deputy Police Chief George Eimel said after the announcement this morning, "We don't expect any problems but we're prepared for any eventuality."

An anniversary observance of the slayings is scheduled for Sunday.

Reaction in the gay community was swift and predictably bitter. Carl Milden, president of the Harvey Milk Lesbian and Gay Democratic

Club, said "Once again justice hasn't been served."

She said the gay community would have to live with the decision from a Republican administration not too sympathetic to gays. There'll probably be an outcry, but the reality is that the man will be free.

Gay activist David Scott, a former mayoral candidate, said it was "disturbing" that Jimmy Carter's attorney general and now Reagan's attorney general refused to prosecute the case. Neither one chose to protect the rights of the people active in supporting the gay cause.

He predicted "a significant backlash" against the system and "time will tell" what form it would take.

Scott Smith, Milk's lover, said government officials seemed to put more work into drafting their statement

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than into investigating the civil rights charges and called it "a political decision."

Russoniello, who declined to make a recommendation to Atty. Gen. William French Smith in the case, said the decision was "just and dictated by the circumstances."

"It is mandated by the law," Russoniello told a press conference. "If people are unhappy with that, then they are unhappy with our system of justice."

He added that while he regretted "very much" not being able to prosecute White, 38, "that personal feeling of not being able to do it doesn't in any way change my opinion that the decision reached was a correct and inescapable one."

Corey Busch, executive vice president of the Giants baseball organization and a spokesman for Gina Moscone, called the decision "unconscionable."

"I think that all you would have to prove is that the civil rights of Harvey Milk and George Moscone were violated," he said. "The whole question is whether justice was served, and it was not."

In declining to prosecute White for preventing Moscone and Milk from carrying out their legal duties, the Justice Department said the evidence is "manifestly insufficient" to prove that White violated federal law when he shot the politicians to death in their City Hall offices.

The statute of limitations for prosecution under the civil rights act expires on the anniversary of the killings.

In a four-page letter signed by Assistant Attorney General Stephen Trott, the Justice Department said, "We appreciate the interest and concern of the citizens and public officials who have submitted letters, petitions and legal memoranda to us in

support of federal prosecution.

"We know that their interest arose out of a concern that justice ultimately be done in this case. We share in their sentiments and condemnation of White's crimes as heinous acts of homicide deserving of commensurate punishment."

Trott went on to say, however: "After a thorough review of all available evidence and the inferences that reasonably can be drawn from the evidence, we have concluded that the evidence is manifestly insufficient" to establish that White violated federal civil rights laws. "We believe that successful prosecution could not be maintained under the civil rights law."

Under the law, White could be tried for violating Moscone's and Milk's rights by interfering with their ability to qualify and campaign as candidates for re-election.

Prosecuting White on federal civil rights charges was suggested last spring by John Wahl, attorney for the Milk estate, with the support of leaders in San Francisco's gay community. By mid-September, the legal tactic had the public support of Mayor Feinstein and Gov. Deukmejian.

Wahl said today, "It's fascinating to see how laws are unequally applied in this case. If the mayor had been for George Moscone but (Vice President) George Bush, if the supervisor had been not Harvey Milk but (U.S. Sen.) Paul Laxalt (R-Nev. and President Reagan's campaign manager), you can bet your boots and bottom dollar there would have been a prosecution."

Mayor Feinstein declined comment on today's decision, "since my views on this matter are well known."

Examiner staff writers K. Connie Kang, Amy Linn and James Schermerhorn contributed to this report.

## Justice Department statement

After a thorough review of all available evidence and the inferences that reasonably can be drawn from the evidence, we have concluded that the evidence is manifestly insufficient. We believe that successful prosecution could not be maintained under the civil rights law. . . . We do not reach our conclusions lightly. There is little doubt that the criminal justice system in California failed to hold Dan White adequately responsible for his actions."

Stephen Trott, Assistant Attorney General

(Mount Clipping in Space Below)

**The Moscone-Milk****Slaying Case****U.S. Won't****Try****Dan White****Rights  
Issue  
Ruled Out***By Susan Sward*

The U.S. Justice Department announced yesterday it will not prosecute Dan White in connection with the killings of San Francisco Mayor George Moscone and Supervisor Harvey Milk.

Department officials said they concluded that the evidence is "manifestly insufficient" to meet the precise legal grounds required to prosecute the 37-year-old former San Francisco supervisor for federal civil rights violations.

Such a prosecution would have required evidence that White had killed Milk and Moscone while they were qualifying for re-election or campaigning.

The decision not to prosecute, disclosed just seven days before the five-year statute of limitations runs out in the case, clears the way for White's January 6 release from Soladad state prison, where he has served a five-year term for the two killings.

The decision caused some criticism — most of it low-key — throughout the city among people who felt White's conviction for manslaughter instead of first-degree murder was a miscarriage of justice.

Assistant U.S. Attorney Stephen S. Trott, in a letter detailing the decision, and San Francisco U.S. Attorney Joseph P. Russoniello defended the lack of prosecution. They also stressed that the decision had not been an easy one to make.

"We do not reach our conclusions lightly," Trott wrote. "There is little doubt that the criminal justice system in California failed to hold Dan White adequately responsible for his actions. However, it is not the appropriate remedy to bring federal charges which are not supported by the evidence and law."

The Justice Department investigation concluded "the evidence strongly suggests" that White's motive was his "anger" over the deci-

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sion by Moscone, with Milk's lobbying, not to grant White's reappointment to the Board of Supervisors after he had quit it.

The "anger" motive failed to meet the federal standard for prosecution needed in this case.

John Wahl, the attorney for Milk's estate who initially pushed for the federal prosecution, and Scott Smith, Milk's former lover, branded the federal move "a white wash."

"They have in fact ratified violent change in the government of the city and county of San Francisco," Wahl said.

Although much of the official reaction to the decision was also critical, the overall tone of the comments was muted — apparently in hope of avoiding violence similar to the "White Night" riots that broke out in the city after the manslaughter verdict against White was reached by the jury on May 21, 1979.

Gay leaders called for peaceful participation in a 7 p.m. candlelight march next Sunday from the Castro District to City Hall — an annual event marking the Nov. 27, 1978, killings of Moscone and Milk, the city's first openly gay elected leaders.

"I would definitely argue people not do any violent deeds" in the wake of the federal decision, said Smith. "Harvey was not a violent person, and I don't think we solve anything by violence."

Supervisor Harry Britt, a gay who was appointed to replace Milk, called the decision "terrible," adding, "It's a political decision. No reasonable person can deny that Dan White was attacking the civil rights of these two great men and of all San Franciscans."

But Supervisor Quentin Kopp, defending the decision as "appropriate," said: "If you read the statute carefully, it will give rise to skepticism and doubt as to its applicability."

In Trott's letter, he noted that the best possible grounds for federally prosecuting White was a civil

rights statute designed to protect persons "qualifying or campaigning for elective office."

Trott acknowledged that Moscone and Milk had filed statements of intention to seek re-election before the killings. But he said the department found no direct or circumstantial evidence beyond this that either man actually was engaged in qualifying or campaigning activities at the time of the killings — as required in order to prosecute.

Even if their actions could be construed as campaigning, Russoniello told reporters, the law also required a finding that the victims were killed because of this activity, before a prosecution could proceed. This was not the case.

The department also rejected the possibility that Moscone's or Milk's involvement in any federal financing program provided a sufficient grounds for prosecution.

The mere fact that the office of the mayor and the Board of Supervisors routinely utilized some federal funds is "insufficient" grounds to make a federal case against White, Trott wrote.

"The conclusion reached by the department is a just one," Russoniello said at a packed press conference at the Federal Building. "It is mandated by the responsibility of the prosecution to only bring prosecutions supported by the evidence."

The Justice Department arguments did not satisfy the host of politicians who had called on the federal government to intervene in the case.

Had a successful prosecution been undertaken, White could have faced a life sentence in prison.

Both Governor George Deukmejian and San Francisco District Attorney Arlo Smith described themselves as "disappointed."

Mayor Dianne Feinstein, who had been vocal in behalf of federal prosecution, said only: "The attorney general's opinion speaks for itself, and I will have no further comment since my views are well known on this matter."

Russoniello's announcement came eight months after Wahl began his campaign to bring about a federal prosecution.

In the following months, Governor Deukmejian, Congresswomen Barbara Boxer and Sally Burton, the San Francisco Board of Supervi-

sors, Mayor Feinstein and District Attorney Smith all supported the attempt to retry White.

In July, the state attorney general's office issued an opinion stating that Deukmejian could not legally delay White's release because he was sentenced under California's fixed-term sentencing law.

Shortly after that, Wahl filed a brief with the Justice Department, asking authorities to file charges against White in federal court under Title 18, United States Code, Section 245.

That section of the federal law, enacted in 1968 by Congress in reaction to the inadequate prosecutions of whites in the South, was cited by the Justice Department in rejecting Wahl's request.

Some critics complained that the bid for a second trial smacked of "double jeopardy" and shopping for a verdict to please the public over White's brief term. But Wahl argued a federal prosecution would not have involved "double jeopardy" because murder was a state offense and the civil rights violations he alleged were against the federal government.

Although Supervisor Britt urged city residents yesterday to write to President Reagan asking him to intervene, and Wahl talked of attempting to build a conspiracy case against White, it appeared the Justice Department decision removed the last impediment between White and the world outside prison walls.



## THE ISSUE

Whether Mayor George Moscone's and Supervisor Harvey Milk's civil rights were violated under a law prohibiting interference with someone's attempt to qualify or campaign for public office.

## THE RULING BY JUSTICE DEPT.

Even assuming that the evidence was sufficient to prove that Mayor Moscone and Supervisor Milk were qualifying or campaigning for office, it still must be proven beyond a reasonable doubt that they were killed because of this activity.

As a matter of law, it is not enough that Dan White killed persons engaged in the activity of qualifying or campaigning for office unless the evidence establishes this nexus



George Moscone



Dan White



Harvey Milk

between the killing and the activity. Unfortunately, no concrete, creditable evidence has been found to establish that the killings in any respect occurred because of any concern or fear White harbored that Mayor Moscone or Supervisor Milk had filed a Declaration of Intent.

In fact, a careful review leads to the supposition that the killings were precipitated by White's

anger at Mayor Moscone and Supervisor Milk over Mayor Moscone's failure to appoint him to the Board of Supervisors.

U.S. Attorney  
Joseph Russoniello



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**Editorials****Nation of laws**

The United States is a nation of laws, and it is precisely because of this that we have maintained our democracy.

Recently, there has been a public outcry against parole for criminals convicted of crimes which people find heinous but for whom the courts have set finite sentences. Convicted murderer/rapist Archie Fain is free on parole in the East Bay; Dan White, who shot and killed Mayor George Moscone and Supervisor Harvey Milk a mere five years ago, is about to be paroled.

A lot of people are calling their paroles a travesty of justice, and they may well be right.

And, because the courts did not sentence these criminals as we think they should have — or because the Justice Department cannot find a legal case to try White for violating the civil rights of Moscone and Milk — they have given us reason to change the laws. But, lest we become a nation of vigilantes and not of laws — in which case we are all in jeopardy — we must respect the individual sentences.

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# Annual candlelight march peaceful

BCN—Peace prevailed Sunday evening as more than 3,000 people marched from the intersection of Market and Castro streets to a City Hall rally in memory of the late San Francisco Mayor George Moscone and Supervisor Harvey Milk.

Five years ago, both men were shot to death at City Hall by former supervisor Dan White, who is scheduled for release from Soledad Prison in January.

A recent decision by federal officials not to prosecute White on civil rights charges prompted leaders of the gay community to caution against a repeat of City Hall riots that followed the jury's return of a manslaughter verdict in White's trial.

"We did not expect violence and there was none," said gay activist Cleve Jones, who led candle-holding marchers in their 10-block trek. "Tonight is to remember Harvey and George, not their murderer."

Guided by 200 orange-vested

members of the Gay/Lesbian Freedom Corps, marchers gathered in front of City Hall, where the dome had been lit with red spotlights. Dozens of police officers helped direct traffic around the marchers and gathered near the rally site, but all agreed there were no disturbances of any kind.

Several speakers at the rally warned against violence on Jan. 6, the date Dan White is due to be released from prison after spending a little more than five years behind bars.

Leaders of the gay community have called for a "work stoppage" between 1 and 1:15 p.m. on Jan. 6 to protest White's release. Supervisor Harry Burton warned demonstrators that wishing violence on White is a "terrible waste of anger" that should be directed at gaining political power and social acceptance for gay men and lesbians.

Scott Smith, a former love of the slain

supervisor and executor of his estate, told the audience that the gay community is "stronger than ever" five years after the killings.

In the short run, assassination can be effective and disruptive, Smith said. But in the end, forces of strength will win out.

Former Congressman John Burton applauded Smith's statements, saying "you cannot kill ideals with bullets. We for friends, but we did not lose their ideals or the direction this City and society will take because of them."

Several speakers compared the slain city officials to other assassinated leaders, including former President John F. Kennedy and civil rights leader Martin Luther King.

"Tonight, we join hands and share in the grief and outrage of political assassination," said Lupita Kashiwahara, the sister of slain Filipino political leader Benigno Aquino. She was cheered by a group of marchers who chanted

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Down with Marcos and carried signs criticizing U.S. aid to the Philippines. The Rev. Cecil Williams of Glide Memorial Church in San Francisco urged demonstrators to go beyond the gay community to create political coalitions with other minority groups in the City.

We're here to say to the world that all well because we are moving on. William told the crowd. "We must have unity and solidarity."

Gina Moscone, the slain mayor's widow, and two of the couple's children waved to the crowd from the stage in front of City Hall.

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# White will go free

The U.S. Department of Justice has decided not to prosecute Dan White, the assassin of Mayor George Moscone and Supervisor Harvey Milk, because of insufficient evidence he violated the federal civil rights of the two City Hall politicians.

The decision, unveiled at a federal Building press conference yesterday, means White will be freed from Soledad Prison on Jan. 6 after serving slightly more than five years for the Nov. 27, 1978, double murder.

The statute of limitations on the federal charges filed by San Francisco attorney John Wahl, representing Scott Smith on behalf of Milk's estate, would have expired in six days, Nov. 27.

Wahl yesterday harshly criticized the Justice Department's ruling, saying, "I think what's going on here is a political whitewash.... If Senator Paul Laxalt were assassinated, do you think the Justice Department would have come to the same decision?"

"This shows that homophobia exists in the United States," Wahl said.

Stopping short of branding the federal investigation into the complaint as slipshod work, Wahl charged the FBI failed to probe all aspects of the case to have the former San Francisco

supervisor tried.

Wahl said FBI agents never contacted the publisher of a San Francisco gay publication about information concerning the White case.

"This chapter is closed, but the book isn't closed," said Wahl.

The attorney said he intends to file new charges against White that White conspired to kill Milk and Moscone. Wahl

refused to elaborate on the specifics of the alleged conspiracy charges he plans to submit.

In response to to the Justice Department action, Mayor Dianne Feinstein said yesterday, "The U.S. Attorney's opinion speaks for itself and I will have no further comment since my views on this matter are well known."

Feinstein, along with several state legislators, had made a request to U.S. Attorney General William French Smith that White be prosecuted on federal civil rights charges.

In presenting the government's case for not trying White, Joseph P. Russoniello, U.S. Attorney for Northern California, handed out a four-page letter written by Stephen Trotter, assistant attorney general of the criminal division.

While noting the San Fran-

cisco registrar of voters showed Moscone and Milk had filed declarations of intent to seek re-election shortly before their assassinations, Trotter wrote, "However, with the exception of these filings there is no direct or circumstantial evidence that either Mayor Moscone or Supervisor Milk were qualifying or campaigning for elective office." Wahl criticized that statement, saying Milk had already

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received campaign funds from a political fundraiser prior to his murder.

Trott's Nov. 17 letter to Russoniello stated, "Unfortunately, no concrete, creditable evidence has been found to establish that the killings in any respect occurred because of any concern or fear White harbored that Mayor Moscone and Supervisor Milk would seek reelection. There is

no evidence that he even knew that either Mayor Moscone or Supervisor Milk had filed a declaration of intent.

Trott said neither Milk nor Moscone were benefitting or participating in any program which received federal financial assistance.

The federal probe discovered that Moscone's attempt to settle the minority police officers' suit against the police department's recruitment and promotion procedures "conceivably comes within" the federal civil rights law.

"But the evidence to support the argument that Mayor Moscone was engaged in this activity at the time of the killings is very weak," wrote Trott.

In his conclusion, Trott wrote, "We do not reach our conclusions lightly. There is little doubt that the criminal justice system in California failed to hold Dan White adequately responsible for his actions. However, it is not the appropriate remedy to bring federal charges which are not supported by the evidence and law...."



Progress photo by Bob Clay

Dan White

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# Anger widespread at ruling on White

*U.S. attorney's decision not to prosecute  
means S.F. slayer will be freed on Jan. 6*

By Angel Fernandez  
The Tribune

SAN FRANCISCO — A unanimous chorus of disappointment stretching from the gay community to the governor's office greeted Monday's decision by the Justice Department not to prosecute Dan White for the 1978 slayings of Mayor George Moscone and Supervisor Harvey Milk.

"What happened here is very much a political whitewash," declared John Wahl, the attorney for Milk's estate who wrote the Justice Department last spring seeking a federal review under civil rights law.

"Obviously, justice was not vindicated today," he said. Wahl disputed the Justice finding that the federal law protecting office-seekers doesn't apply to White because the killings were committed in anger over the loss of his supervisor's job, not because Moscone and Milk were running for re-election.

"These people were campaigning and Dan White knew it," Wahl asserted. "He pulled a political coup d'etat."

Wahl said his office was still looking into the possibility that White could be prosecuted under federal conspiracy laws, which carry a longer statute of limitation. Because Sunday is the deadline for an election-related civil rights prosecution, the agency's decision virtually assures White's parole from Soledad Prison on Jan. 6.

Gov. Deukmejian is "very disappointed" by the ruling, according to press officials in Sacramento, who added tersely: "The governor believed that grounds existed for federal prosecution."

San Francisco District Attorney Arlo Smith also expressed disappointment, but cautioned, "We must keep in mind that all

the processes of the law have been carefully followed."

"The U.S. attorney's opinion speaks for itself," Mayor Dianne Feinstein said in a statement released by her office. "I will have no further comment since my views are well known."

Feinstein had written U.S. Attorney General William French Smith to request a federal prosecution, and she has asked the state parole board to forbid White to return to San Francisco if he is released.

"I think it stinks," said Supervisor Harry Britt, who is gay. "No reasonable person can argue that Dan White did not violate civil rights, but clearly the Reagan administration does not want to deal with this issue and that is offensive to me as a San Franciscan."

Britt noted that because Congress is in recess, "the only person standing now between Dan White and freedom is Ronald Reagan." He did not indicate

whether a direct appeal would be made to the president.

Supervisor Carol Ruth Silver said she was "saddened and frightened" by the ruling. "I had a great deal of confidence that

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the attorney general's office would (act) out of a sense of due process and justice," she said. "Unfortunately, I was greatly disappointed."

Carole Migden, president of the Harvey Milk Democratic Club, said, "I really didn't expect

responsiveness on the part of the federal prosecutor, but I suppose we're going to have to live with this very grave injustice.

"Certainly, this will be a great tool for organizing," she added. "I hope we can turn this into a positive measure to address the grief, the pain and the frustration that we all feel."

Scott Smith, Milk's longtime lover and the executor of his estate, agreed that the ruling could increase solidarity in the gay community. But he doubted that it would spark any anger

during the candlelight march down Market Street that will take place Sunday in commemoration of the assassinations.

"The march and memorial service on the steps of City Hall have always been somber and in loving memory of two men who were very, very well respected in this city," Scott explained. "I don't expect this decision to have any effect on that."

Contributing to this report were staff writers Pamela Abouzeid, Gene Ayres and Virgil Meibert.



Harry Britt

Offended by decision

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# U.S. says it won't try Dan White

## Federal attorney 'regretfully' decides against prosecution of S.F. assassin

By Angel Fernandez  
 The Tribune

SAN FRANCISCO — To the dismay of gay activists and public officials alike, the Justice Department announced Monday that it had no grounds to prosecute Dan White under federal law for the assassinations of Mayor George Moscone and Supervisor Harvey Milk.

"The conclusion is inescapable," U.S. Attorney Joseph Russoniello told a news conference. "I regret very much that we don't have the opportunity to prosecute."

The ruling came less than a week before the fifth anniversary of the Nov. 27, 1978, City Hall killings, when the statute of limitations under the U.S. Civil Rights Act expires. It means that White, 37, will walk out of Soledad Prison a free man Jan. 6.

### Five years in prison

Counting time off for good behavior and time served before conviction, the former San Francisco policeman and supervisor will have served just more than five years of the 7½-year term for voluntary manslaughter he got for the two slayings.

The May 1979 sentence, which set off a riot that injured 160 people and damaged more than \$1 million in city property, resulted from a "diminished-capacity" defense that has since been banned by the Legislature. White convinced his Superior Court jury that financial pressures and City Hall maneuvering combined

with overindulgence in junk food, caused him to commit the killings.

### Resigned from board

White had resigned from the Board of Supervisors two weeks before the slayings, saying he couldn't support his family on his \$9,700-a-year salary. After White changed his mind, Mos-

cone refused to give back the job, partly at the urging of Milk, the city's first openly gay politician.

The mild sentence sparked a campaign supported by the Board of Supervisors, Mayor Dianne Feinstein and Gov. Deukmejian to get Justice officials to prosecute White under the Civil Rights Act, which makes it a crime to injure anyone who is "qualifying or campaigning" for elective office.

### Little doubt seen

"There is little doubt that the criminal justice system in California failed to hold Dan White adequately responsible for his actions," Assistant Attorney General Stephen Trott said in an opinion sent to Russoniello. But he said the law in question is "concerned with the integrity of the electoral process, not with the ongoing protection and safety of elected officials."

Despite plans by Moscone and Milk to run for re-election and despite the "enormous political differences (with) his victims," Trott called the evidence "manifestly insufficient to prove that this was why White killed them."

### Evidence cited

"The evidence," he said, "established that the motive for

the killings was retaliation for the failure of Mayor Moscone to re-appoint White to his supervisory seat."

Russoniello, whose office spent 200 hours reviewing transcripts and sifting the evidence before forwarding the case to Washington, said motive was all important to the federal case.

Although his staff "did not play an advocacy role," Russoniello said he supported the decision because the injustice "would only be exacerbated if prosecution were brought under a convicted charge."

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## EDITORIALS

# No Recourse on Dan White Case

THE PROSPECT that Dan White will walk out of prison early next year after having served so short a term is deeply frustrating. His crime was grievous and deliberate. He killed two San Francisco leaders of special warmth, ability and promise — Mayor George Moscone and Supervisor Harvey Milk. His punishment has been disgracefully mild. Justice was clearly not served in the case of former supervisor White.

That said, it must also be emphasized that the decision of the U.S. Justice Department on Monday not to prosecute White for violation of civil rights laws appears to have been correct. The section of the federal criminal code under which White would have been brought to book again is a difficult and technical one. Certain specific situations must clearly obtain for a successful trial.

As U.S. Attorney Joseph Russoniello explained, even assuming that Mayor Moscone and Supervisor Milk were qualifying or campaigning for office at the time of the crime, it would still have to be proven beyond a reason-

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able doubt that they were killed because of this activity. In other words, there had to be a strong tie-in between their re-election situation and the crime. Russoniello and the other federal lawyers concluded that "unfortunately" no "concrete, creditable evidence" had been found to achieve this important link.

"WE DID NOT reach our conclusions lightly," concurred Assistant U.S. Attorney Stephen S. Trott in a letter detailing the decision. "There is little doubt that the criminal system in California failed to hold Dan White adequately responsible for his actions. However, it is not the appropriate remedy to bring federal charges that are not supported by the evidence."

That last line rings with persuasive reasoning. The system has been tarnished enough. Why concoct another prosecution on legally-shaky grounds that could only stain it still further? The damage was really done at White's trial — through, among other matters, the admission of evidence aimed at proving his mental capacity was so diminished as to provide excuse for his bloody actions. This turned it into a showcase for fuzzy psychiatric testimony. It is typical that perhaps the best remembered aspect of this court passage was the extraordinary notion that consumption of a number of high-sucrose cakes known as Twinkies might induce violent behavior.

The Dan White case stands as a deplorable chapter in the annals of criminal jurisprudence. But it cannot be made right through an invalid act. The Justice Department has done the only proper thing: Come down hard on the letter of the law.

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# Experts Back U.S. Decision On Dan White

By Susan Sward

Legal experts in California, while acknowledging many people want to see Dan White prosecuted again, said yesterday the U.S. Justice Department decision not to do so was legally correct.

"There is no provable violation of federal law," said prominent San Francisco attorney Ephraim Margolin.

Margolin made his statement after reviewing the federal law that the department examined before it found "manifestly insufficient" evidence to prosecute White for killing San Francisco Mayor George Moscone and Supervisor Harvey Milk at City Hall five years ago.

"Therefore, a call for a federal prosecution of White in the federal forum reflects our feeling about what happened with White, but it cannot be sustained in law," Margolin said.

In May of 1979 a San Francisco jury convicted White, a former San Francisco supervisor, of manslaughter — not first-degree murder — and the verdict outraged many people.

The Justice Department's decision not to prosecute White for federal civil rights violations in connection with the two killings apparently removed the only remaining obstacle between White and freedom. The department on Monday announced that the case did not meet any of the precise legal grounds needed to support another prosecution — such as a finding White killed his victims to stop them from seeking re-election.

White, now 37, is due to be released from Soledad state prison

on January 6 after spending more than four years there. He then will be under state-supervised parole for a year before he is given his complete freedom.

In interviews yesterday, many lawyers familiar with the applicable federal law, including a former San Francisco federal prosecutor and two former federal prosecutors in Los Angeles, said the Justice Department decision was proper.

Several pointed out that the statute the department had studied in connection with the case — Section 245 of U.S. Title 18 — related to interference with specifically detailed, federally protected civil rights such as voting, campaigning, and, in special instances, receiving and administering federal funds. They added that this federal statute was never intended to cover the two murders at issue, which clearly came under state jurisdiction.

"Dan White certainly meant to shoot Moscone and Milk, but every murder case does not automatically become a civil rights case," said James Brosnahan, a former San Francisco assistant U.S. attorney who now has a private practice.

"To make a civil rights case, you have to have an intent to deprive a person of a specific civil right — like their right to vote, their right to free speech, their right to participate in government, no matter what their race," Brosnahan said.

"I think there was a lack of evidence that White had in his mind an intent to deprive Moscone or Milk of their civil rights."

Barry Tarlow, a former assistant U.S. attorney who is a past vice chairman of the American Bar Association criminal justice section, said that if the facts had been sufficient to support a prosecution, San

Francisco U.S. Attorney Joseph P. Russoniello and Assistant U.S. Attorney General Stephen S. Trott in Washington would have pressed the case.

"Both are hard-nosed, vigorous prosecutors," Tarlow said in a telephone interview. "Russoniello is

not someone I'd describe as soft on crime, and Trott is one of the finest lawyers in the country — extremely bright, very tough. No one will pull the wool over their eyes."

Gerald Uelman, another former assistant federal prosecutor in Los Angeles and a law professor at Loyola University there, added that "legally, a federal prosecution is not simply an alternative to plug in whenever a state prosecution is frustrated."

Patrick Hallinan, a San Francisco lawyer who was appointed by Moscone as chairman of the city's Board of Permit Appeals, said the only way the Justice Department would have had any jurisdiction to prosecute would be if it could have shown a definite violation of federal law — which didn't exist.

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"I think the evidence showed the main reason White killed Moscone and Milk was a bitterness about the fact he was not reappointed as a supervisor," Hallinan said.

Hallinan and several other San Francisco lawyers said that the legal decision, although definitely correct, was hard for many to accept because they had cared for Moscone and Milk.

"George was a long-time friend of mine," Hallinan said, "and I'd like to see Dan White rot in hell."

But he said it would create a dangerous legal precedent to press a federal prosecution of White when the evidence did not justify it.

Hallinan's father, Vincent, a prominent liberal lawyer, agreed, saying: "Russoniello followed the law. If you have certain rules of law, they have to be applied, even though you're outraged and wouldn't mind joining a lynch mob emotionally."

J. Tony Serra, a San Francisco defense attorney, complained that the White case had already done enormous damage to the rights of defendants by touching off the furor that prompted the Legislature and the judiciary to react sharply against the use of psychiatric testimony in trials.

"With the White case we lost the mental defense as a meaningful jury issue," Serra said. If the federal government had gone on to prosecute White again, "it would have been manifestly an abuse of prosecutorial discretion. There was no civil rights violation per se. It was a homicide and properly within state authority."

All the lawyers based their comments on U.S. Title 18, Section 245 — adopted in 1968 by Congress in the wake of Martin Luther King's assassination. The law grew out of a concern that courts in Southern states had inadequately prosecuted white defendants during the civil rights struggle.

Russoniello said yesterday that although several grounds existed in that law under which White con-

ceivably could have been prosecuted, his office focused its attention on three main grounds that seemed to have the greatest possible bearing on the case.

Two involved a victim's receipt and administration of federal funds and the other involved campaigning for office.

He said that as far as he knew the federal financing statutes had never been used to prosecute a defendant before, and the campaigning section had been used successfully only once — in a Florida case involving threats sent to President Gerald Ford, Vice President Nelson Rockefeller and candidate Ronald Reagan through the mail in the period before the 1976 election.

The Justice Department thought the strongest case for prosecution could be made under the campaigning statute, but concluded after a review that even that there was no evidence to sustain a conviction.

John Wahl, the attorney for Milk's estate who pressed for the federal prosecution in the first place, disagreed sharply with the Justice Department yesterday.

He complained that department officials made no mention of an affidavit he sent them by Paul Hardman, the director of Pride Foundation. Hardman's affidavit said White told him three days before the killings that he planned to stop Moscone and Milk from giving federal funds to a community group that Hardman and White opposed.

Russoniello responded that the episode outlined in the affidavit did not meet the test needed for a prosecution because Milk had received none of the disputed federal money, and in any event, there was no evidence that White killed Milk because of this dispute.

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## Editorials Justice weeps again

**N**OTHING HAS BEEN awaited in San Francisco with any more interest than the decision as to whether Dan White will be tried again — on federal civil rights charges — for the killings of former Mayor George Moscone and Supervisor Harvey Milk. Now we have the word at last — that he will *not* be tried — and this brings melancholy reflections upon the state of justice in this city and the nation.

In deciding against any prosecution of White for denial of those officials' civil rights under federal law, the Justice Department in Washington says it believes "that successful prosecution could not be maintained." It decided that Moscone and White in the circumstances of that fatal day in 1978 were not covered under two key sections of the relevant civil rights statute.

That law applies, according to a federal spokesman, to a crime against a person seeking re-election. The injury must be done to a person attempting to overcome discrimination.

Surely Milk, The City's first gay supervisor, was attempting this, and his activities in the gay sector had helped to draw White's anger against him. And surely both he and Moscone had declared for re-election. But the Justice representative said that the "legislative history demonstrates that Congress was concerned with the integrity of the electoral process, not with the ongoing protection and safety of elected officials."

Well, we are not masters of legal interpretation, but we wish the Justice Department had tried harder to make this law apply. Certainly the electoral outcomes in this city were altered by the lethal shots fired by Dan White in City Hall.

Moreover, the failure of a trial jury in 1979 to convict White of anything more than voluntary manslaughter, under state law, is a source of abiding grief in San Francisco. He will be out of prison in January. Justice wept in '79 for the malfunctioning of its system, and does so again upon the word from Washington.

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# U.S. ruling on White was right, say most lawyers

By K. Connie Kang  
Examiner staff writer

The Justice Department's decision not to prosecute Dan White for killing Mayor George Moscone and Supervisor Harvey Milk under federal civil rights laws may not sit well with many San Franciscans, but lawyers familiar with those statutes say the decision is legally sound.

"As a legal matter, I think it's quite an appropriate judgment by the Department of Justice," said San Francisco attorney James Brosnahan, a former federal prosecutor.

"There are murder cases and there are civil rights cases," Brosnahan said. "It's a civil rights case when it has racial overtones, when it has voting overtones or it has First Amendment overtones."

"This is a case where two people were killed, and it's not part of a grand political plan. No matter how you view the evidence, it was a sudden decision to shoot."

San Francisco attorney Michael Mendelson, a friend of Moscone and Milk, said that, personal feelings aside, the federal laws don't support intervention in the case: "If the victims had been minorities, say Asian-Americans or Americans of Mexican descent, who were randomly shot down because of race, it is imperative for the federal government to get involved."

"But what you had is a crazed individual wreaking personal revenge against one who happened to be gay and the other who was liberal."

White is scheduled for parole Jan. 6. He was convicted of manslaughter

in May 1979 and sentenced to seven years and eight months in state prison.

The jury, which could have convicted White of first-degree murder, apparently was persuaded by White's lawyer's argument that White suffered from diminished capacity brought on by extreme pressures from his abrupt resignation from the Board of Supervisors, Moscone's refusal to reappoint him and his junk-food diet.

When White was told of the federal government's decision yesterday, he took the news with no change of expression, according to Herb Matthews, the Soledad public relations officer who carried the news to White's cell. "I asked him if he had any reaction, any statement he wanted to make, and he said, 'No.'"

The decision removes the last apparent obstacle to White's scheduled Jan. 6 parole date. Phil Guthrie, assistant director of the state Department of Corrections, said he will be paroled to a location in California, but the state has "prohibited him from returning to San Francisco because of the notoriety of the case."

The 1979 verdict caused a spontaneous "White Night Riot" in which angry gays clashed with police around City Hall, Market Street and in the Castro District.

But last night, the mood on Castro Street was subdued. More than 50 police wearing riot gear were positioned in and near City Hall. But most were dismissed shortly after 8 p.m.

The annual candlelight parade from the Castro to City Hall to commemorate the two slain leaders is

scheduled for Sunday. Several gay leaders predict angry emotions then.

U.S. Attorney Joseph Russoniello said the Justice Department won't prosecute White under federal civil rights laws because evidence is "manifestly insufficient" to prove that he violated federal laws when he shot the men in their City Hall offices.

"We believe that successful prosecution could not be maintained under the civil rights law," the Justice Department said in a letter signed by Assistant Attorney General Stephen Trott.

The government concluded that a

careful review leads to the supposition that the killings were precipitated by White's anger at Moscone and Milk over Moscone's failure to reappoint him to the Board of Supervisors. To prosecute under the federal statute, the government said, the killings would have had to be directly related to a campaign for re-election.

San Francisco attorney Ephraim Margolin, a specialist in constitutional law, said the law clearly supports the Justice Department decision: "I felt that the pressure and the newspaper reporting in the direction of inviting U.S. participation was so much grandstanding because it was very clear that the law would not support any indictment in a United States court."

But John Wahl, attorney for Milk's estate who began the move to try to get the government to prosecute White, disagreed: "If the lawyers had seen the evidence he had sent to the Justice Department, they would have reached a different conclusion."

"I am sure he (Dan White) had bad feelings toward Moscone and Milk."

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individually, but he also wanted to change the political direction of San Francisco."

Wahl charged that the Justice Department letter "very conveniently" ignores all the evidence he had forwarded to Russoniello: "It's a pile of garbage. If these were a bunch of lawyers and investigators working for me, I would fire the lot of them in five minutes."

Wahl said the evidence he sent the Justice Department shows that White intended to keep Moscone and Milk from continuing as mayor and supervisor because he didn't like the way they were leading The City.

The Justice Department at first agreed to investigate prosecution under civil rights statutes at Wahl's request. A number of politicians — including Gov. Deukmejian — quickly endorsed the move.

Historically, federal civil rights laws have been invoked to seek tougher punishment in the South, where all-white juries have acquitted white people charged with killing

blacks such as the bombing of a church in which three black girls were killed.

More recently, the federal law has been used in Texas in the racially motivated killings of a Mexican-American and a Chinese-American in Michigan.

"The profile of Dan White's case doesn't fit other civil rights cases," Mendelson said. "In Dan White's case, the issue is: Was the penalty stiff enough? Liberals are all screaming for blood, and conservatives are saying enough is enough."

Brosnahan said: "If the sentence or verdict of the jury was too light, as people believe, it's not appropriate to make up for it by instituting a federal prosecution. A person was tried once, and I think we ought to let it stay behind us."

And Margolin said: "If you had a situation such as in the South where civil rights workers were killed and the killing had a federal connection, federal jurisdiction may be invoked. This was not that kind of case."

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## How White Received The News

Moments after word reached Soledad state prison yesterday that the U.S. Justice Department had decided not to prosecute Dan White, a prison official made his way through its stark corridors to inform White of the news.

White — who was wearing a prison-issued blue shirt, jeans and sneakers — showed "no change in his expression and had no reaction," said Herb Matthews, the Soledad official who went to White's cell. "He only said he had no comment."

If White is set free at 12:01 a.m. on January 6, it will be five years, one month, eight days, 12 hours and 25 minutes since he turned himself in at Northern Police Station after the killings of Mayor George Moscone and Supervisor Harvey Milk.

Phil Guthrie, deputy director of the California prison system, said the Justice Department's decision means "there appears to be nothing to stop his release unless White misbehaves in prison, and that's unlikely because he's been well-behaved up to now."

Once White has completed one year under state-supervised parole, he will face no further restrictions on his activities and will be free to do whatever he chooses.

Guthrie said White probably will be paroled to a site "somewhere in California" and that location likely will not be San Francisco "because of the notoriety of the offense."

In the past, Guthrie has said that the state would not approve San Francisco as a parole site for White because "he'd probably get killed there."

White already has submitted his parole plan — outlining where

he wants to live and work — to state prison authorities for their approval, and they have declined to comment on it.

While on parole, White will have to pay periodic visits to his parole officer. He also will have to get the parole officer's approval if he wants to travel outside the county where he has been paroled. If White should violate his parole, he could not under law serve any more than 1½ years of combined parole and prison time, state officials say.

White's attorney, Doug Schmidt, was not available for comment on his client's plans yesterday. In the past Schmidt and White's family have repeatedly refused to comment on the case.

Several old friends of White, commenting on what he will face once he is free, said yesterday that his life with his wife and two small children will be very hard.

"He's going to have a very difficult time, wherever he goes," said police homicide inspector Frank Falzon, one of White's closest friends before the killings.

Falzon, who was the chief police investigator in the Moscone-Milk killing case, added: "Just knowing Dan White and the way he was raised, this was so out of character that he's probably going to be as hard on himself as anyone could be."

Another of White's close friends, asking not to be named, said: "There's so much hatred out there for the guy. He's been portrayed as such a monster. Who would want him to live next door? What's he going to do? God only knows."

— Susan Sward

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